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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 182 81.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY), PLAINTIFF IN ERROR,

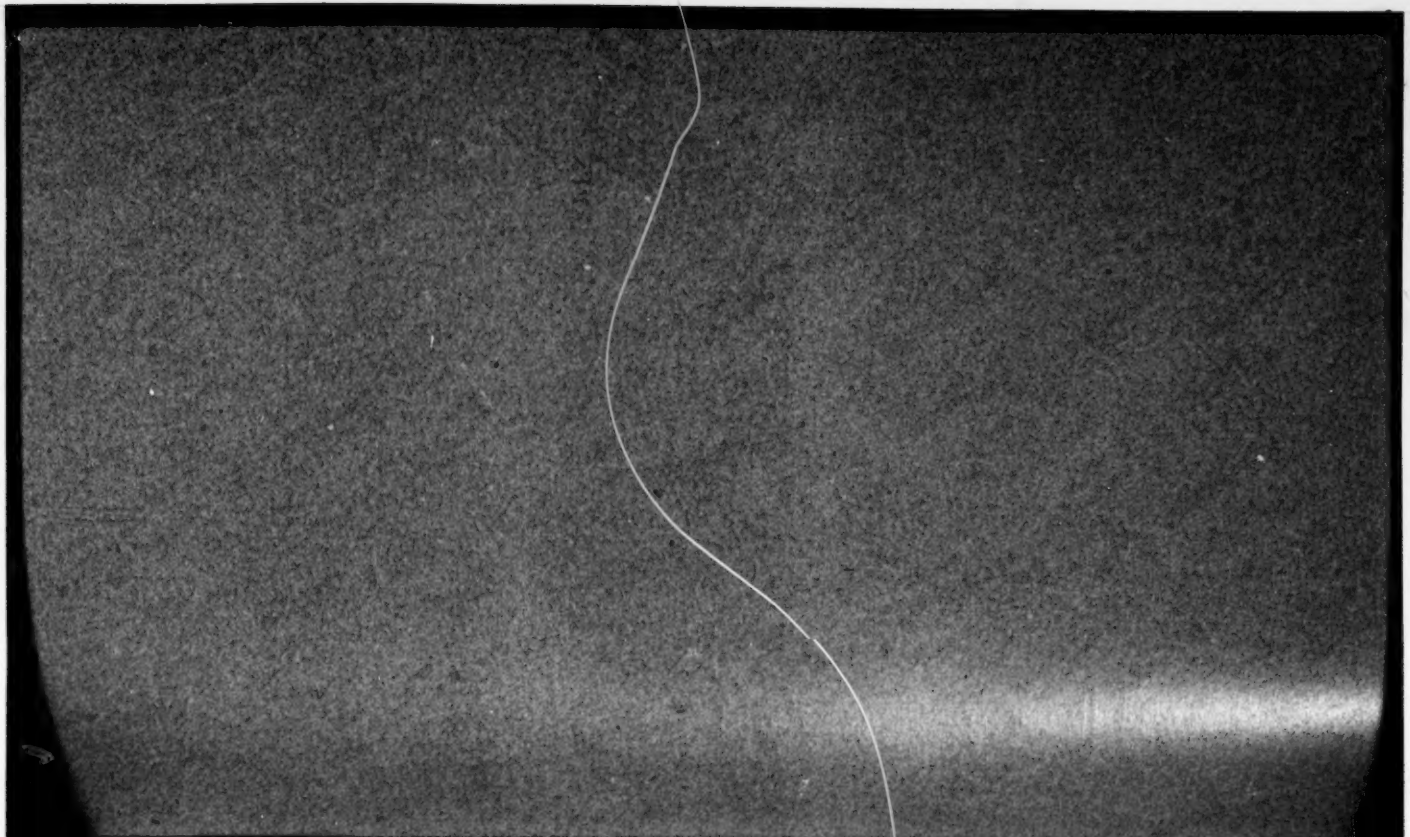
vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN, AND MARGARETHA LONSTORF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JUNE 11, 1900.

(17,798.)



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STATE OF MINNESOTA.

Supreme Court

1

APRIL TERM, 1900.

STATE OF MINNESOTA, COUNTY OF LAKE
District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff, 2

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants.

3

SUMMONS.

The State of Minnesota to the above named Defendants:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which is filed in the office of the clerk of the district court of the Eleventh Judicial

STATE OF MINNESOTA, COUNTY OF LAKE
District Court, Eleventh Judicial District.

VENUE CHANGED TO ST. LOUIS COUNTY.

---

10 The Midway Company (Substituted for the Germania Iron Company), Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Walter Ayers, being first duly sworn, upon
11 his oath says, that he is one of the attorneys for the plaintiff in the above entitled action; that service of the summons herein has been duly made by publication against the following named defendants therein, to-wit:

Thomas Chellew, Fred F. Huntress, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram and Daniel C. Sullivan.

That the time to appear and answer or demur to the complaint in said action expired on or about
12 the 15th day of May, 1896. That none of said defendants have served an answer or demurrer herein, nor have any of said defendants, excepting only Fred F. Huntress, appeared in said action;

Deponent further says; that the defendants, The Bishop Iron Company and Charles P. Wheeler, duly appeared in said action by their attorneys, Draper, Davis & Hollister, on or about the 23rd day of May, 1896, and that the defendant, Samuel

C. Brown, was duly served with the summons herein on or about the 24th day of January, 1896, and that the said Samuel C. Brown and Fred F. Huntress appeared in said action on the 24th day of January, 1896, by White & McKeon, their attorneys; that the time to answer or demur to the complaint herein has long since expired; that 13
neither the said Samuel C. Brown, Fred F. Huntress, Charles P. Wheeler or the Bishop Iron Company have served an answer or demurrer herein.

Subscribed and sworn to before me this 14th day of July, 1899.

WALTER AYERS.
Notary Public.

14

STATE OF MINNESOTA, COUNTY OF LAKE
District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, 15
Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants.

ANSWER AND CROSS-PETITION.

The defendant Thomas W. Hyde answering

the complaint of the plaintiff in this action alleges and shows to the Court:

I.

1. He denies each and every allegation in
16 said complaint contained not hereinafter admitted to be true.

2. He specifically denies that the plaintiff is the owner of any part of the land described in the complaint.

3. He specifically denies that he wrongfully or unlawfully claims an estate or interest in said lands. He admits that he claims an interest and estate in said lands adversely to the plaintiff, and denies that said claim is unfounded in law or in
17 fact.

4. He denies that said lands are vacant and unoccupied, and alleges that he is now and for a long time prior to the commencement of this action was, and ever since has been, in open, notorious and exclusive possession of the same.

5. He admits that the plaintiff and the Bishop Iron Company are corporations duly organized and doing business under the laws of the State of Minnesota.
18

II.

For further answer and by way of counterclaim against the plaintiff, Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Charles P.

Wheeler, Daniel C. Sullivan and the Bishop Iron Company and Thomas Chellew, the defendant Hyde says:

1. That the plaintiff and the Bishop Iron Company now are and during all the times herein stated have been corporations, duly organized and doing business under the laws of the State of Minnesota. 19

2. That the defendant Thomas W. Hyde is now and ever since August 28, 1884, has been, in the actual, open and exclusive possession of the lands mentioned and described in the complaint herein, and during all of said time has claimed and now claims the ownership thereof.

3. That the plaintiff and the several other parties defendant in this action, claim some right, title and interest in and to said lands adverse to the defendant Thomas W. Hyde, all of which claims are unfounded in law and in fact. 20

4. The defendant further alleges and shows to the Court that on the 16th day of June, 1883, said section thirty (30) being unsurveyed, Orillie Stram nee Moreau, by Frank W. Eaton, her alleged attorney in fact, illegally and without authority located Sioux half-breed scrip, Nos. 19 D. and 19 E., on certain lands therein, by metes and bounds, which locations when the lands were surveyed and the plat thereof filed in the local land office at Duluth, Minnesota, were adjusted by the local land officers in the name of Orillie Stram nee Moreau, scrip No. 19 D. upon lots 3, 5 and 6, and the S. E. 1-4 of the N. W. 1-4 of said section 30, and scrip 19 E. upon lots 1 and 2, and the S. W. 1-4 of the N. E. 1-4 and the N. W. 1-4 of the S. E. 1-4 of said section 30. 21

5. That on the 9th day of October, 1884, the defendant Thomas W. Hyde filed in the said local land office an affidavit of contest, duly corroborated, against the said scrip location made with the said Sioux half-breed scrip No. 19 D., and thereby contested the same on the grounds that
22 the said scripee Orillie Stram nee Moreau, never made any improvements whatever on said lands, either in person or by agent, or attorney, and that said lands at the date of the attempted location of said scrip No. 19 D. were unsurveyed, and belonged to that class of lands located with said scrip after the scripee had made improvements on the same, and in support of the said charge said Hyde also submitted an affidavit of the said scripee in which she denied ever having given,
23 either directly or indirectly said Frank W. Eaton a power of attorney, or any authority of any kind to locate any land with said scrip, or to erect buildings and make improvements upon the lands located with the said scrip No. 19 D.

6. That in refutation of said charges said Frank W. Eaton filed in said land office certain affidavits in support of the legality of said scrip location 19 D. and also certified copies of two powers of attorney, purporting to be executed by
24 the said scripee and her husband, and to authorize him to select and locate and to make the necessary improvements to enable him to locate for her said scrip No. 19 D.

7. That on the 9th day of October, 1884, one Angus McDonald duly filed in said land office an affidavit of contest, duly corroborated, against the said location of said scrip No. 19 E., and thereby contested the same on the grounds that the said scripee Orillie Stram nee Moreau never made

any improvements whatever on said lands, either in person or by agent or attorney, and that said land at the date of the attempted location of said scrip No. 19 E. were unsurveyed, and belonged to that class of lands locatable with said scrip after the scripee had made improvements on the same and in support of his said charge the said McDonald also submitted an affidavit of the said scripee in which she denied ever having given either directly or indirectly, said Frank W. Eaton, a power of attorney, or any authority of any kind, to locate said land with said scrip, or to erect buildings and make improvements upon the lands located with the said scrip No. 19 E. 25

8. That in refutation of said charges of the said McDonald against the said location of scrip No. 19 E., the said Frank W. Eaton filed in said land office certain affidavits in support of the legality of said scrip location No. 19 E., and also certified copies of two powers of attorney purporting to be executed by the said scripee and her husband, and to authorize him to select and locate and to make the necessary improvements to enable him to locate for her said scrip No. 19 E. 26

9. That the said application of the defendant Thomas W. Hyde and the said McDonald to contest the said scrip location of Sioux half-breed scrip No. 19 D. and 19 E., duly came on for hearing before the Assistant Commissioner of the General Land Office, and he, on the 14th day of November, 1885, by Letter "C" of that date a true and correct copy of which is hereto annexed, and marked "Exhibit A," and made a part hereof ordered a hearing to determine the legality of the said scrip locations Nos. 19 D. and 19 E. 27

10. That said order was duly transmitted to the said local land office, and on the 17th day of November, 1885, the Register and Receiver of said land office duly fixed as a day for hearing in each of said cases the 6th day of April, 1886, and duly issued notice thereof, in the contest of the
28 said Angus McDonald, a true and correct copy of which notice is hereto annexed, marked "Exhibit B," and made a part hereof, and also at the same time the said local land officer issued a notice of said hearing in the contest of the defendant Thomas W. Hyde, a true and correct copy of which notice is hereto annexed, marked "Exhibit C," and made a part hereof.

11. That both of the said notices of hearing were duly served upon all the parties in interest
29 in both of said cases.

12. That on the 6th day of April, 1886, pursuant to said notice and order of hearing, the said contest of said Angus McDonald came on for hearing before the Register and Receiver of the said local land office, and all parties thereto appeared, and submitted evidence. That on said hearing the evidence so submitted showed, that the scripee never saw the land or the improvements or had anything whatever to do with either,
30 and that the said Orillie Stram nee Moreau had executed to the said Frank W. Eaton two powers of attorney, one authorizing him to locate the said scrip, and the other to sell and dispose of the lands upon which the scrip should be located.

13. That at the conclusion of the taking of the testimony and the submission of evidence on the said hearing in the said contest of Angus McDonald all the parties to the said contest of the

defendant Thomas W. Hyde against the said scrip location No. 19 D. being present, and his said contest being called for hearing, made and entered into a stipulation whereby it was stipulated and agreed that the testimony in the McDonald case should be considered in determining the validity of the said scrip location No. 19 D., which 31
stipulation was and is as follows:

"It is hereby stipulated and agreed upon that this testimony (meaning the testimony in the McDonald case) shall be considered in determining the validity of both locations of scrip 19 D. and 19 E. (meaning the location hereinbefore mentioned),"

That the said two powers of attorney were filed in the General Land Office before said hearing, and were before the local land officers on each 32
of said hearings as evidence therein. That the question as to the validity of said scrip location No. 19 D. was the only issue in said contest of the defendant Thomas W. Hyde, and that the only issue in the said contest of the said McDonald was the validity of the said scrip location No. 19 E. That there was no cost or expense of taking evidence or reducing testimony to writing on the hearing of the said contest of the defendant Thomas W. Hyde. That the defendant Thomas 33
W. Hyde paid all the costs and expenses including attorney's and witness fees, in procuring the cancellation hereinafter mentioned, of the said scrip location No. 19 D.

14. That thereupon on the said evidence in the said McDonald case, and the evidence stipulated into the said Hyde case as aforesaid, the said local land officers erroneously and contrary

to law, decided and held both of said scrip locations valid.

That from said decision the defendant Thomas W. Hyde in due time duly appealed to the Honorable Commissioner of the General Land Office, and assigned as errors on said appeal the following, to-wit: 1st. Because the Register and Receiver were never authorized or directed to decide said cause. 2nd. Because the so-called decision was contrary to the evidence and the facts. 3rd. Because the so-called decision was contrary to law. 4th. Because the so-called decision treats the case as though the contest was one between the scripee and her attorney, whereas, it grew out of a contest by third parties, who claim and have shown that the scrip entry was fraudulent on the part of both the scripee and her grantees. 5th. The local land officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether the land contained improvements made by, or under the personal supervision or direction of the scripee, and that they were not for her personal use and benefit.

15. That the said appeal of the defendant Thomas W. Hyde, came on for hearing before the Hon. Assistant Commissioner of the General Land Office, and he, on the 4th day of August, 1888, by letter "H" of that date, a true and correct copy of which is hereto annexed, marked "Exhibit D" and made a part hereof, cancelled said scrip locations Nos. 19 D. and 19 E., on the ground that "The evidence shows conclusively that the scripee never saw the land or the improvements, or had anything whatever to do with either."

16. That said Frank W. Eaton appealed from said decision of August 4th, 1888, unto the Hon. Secretary of the Interior, and said appeal came on for hearing before said Secretary (Wm. F. Vilas) and after considering the same, he, on the 18th day of February, 1889, affirmed said decision, but erroneously and contrary to law declared said 37
lands open to entry by the first legal applicant, and denied the defendant Thomas W. Hyde a preference right to enter said land. That under the laws of the United States (Act May 14, 1880), the defendant Thomas W. Hyde by virtue of the premises was entitled to a preference right to enter said lands located with the said Sioux half-breed scrip No. 19 D. upon the cancellation thereof at any time within thirty days after he had received notice of such cancellation. That the said Thomas 38
W. Hyde during all the time herein mentioned was a citizen of the United States, and during all the time herein mentioned was duly qualified to enter said lands as a homestead under the laws of the United States.

17. That thereafter and within the time prescribed by the rules of practice of the Land Department the defendant Thomas W. Hyde made a motion to review said decision of the Hon. Secretary of the Interior, dated February 18th, 1889, on the 39
grounds among others, that it was error for said secretary to hold that said lands were open to entry by the first legal applicant, and that it was error to deny him a preference right to enter said lands. That thereafter the said motion came on for hearing after due notice, before the Hon. Secretary of the Interior (John W. Noble), and he, on the 28th day of January, 1891, modified said decision of Secretary Vilas by holding and decid-

ing that the preference right of entry of the defendant Thomas W. Hyde was not decided thereby.

That pending the said motion for review on the 23rd day of February, 1889, the said local land officers, unlawfully, erroneously and without
40 authority, allowed one Emil Hartman to locate Valentine scrip No. 117 E. upon said S. E. 1-4 of N.W. 1-4 of said Sec. 30,and that from the rejection of various applications to enter said land which had been made on or about the 23rd day of February, 1889, by different parties they each and all respectively appealed unto the Commissioner of the General Land Office. That on the 13th day of March, 1889, the said appeals came on for hearing before the said Commissioner, and he, on that
41 day, considered all said appeals as applications to contest the entry of said land by the said Hartman, and on that day promulgated the said decision of said Secretary Noble and ordered a hearing to determine the respective rights of the parties, and in such order directed the local land officers to notify the defendant Hyde and the said Angus McDonald of the final cancellation of the said Sioux half-breed scrip locations, and directed the said local land officers to allow the defendant
42 Hyde and the said Angus McDonald a full opportunity at said hearing to present their testimony and be heard with the others. That on the 3rd day of April, 1891, and within thirty days after he received notice of the cancellation of said Sioux half-breed location No. 19 D. the defendant Hyde duly made application to enter said land as a homestead, and duly tendered the fees on said application, which application was erroneously, wrongfully, without authority of law rejected

by the said local land office. That said lands at said time was subject to entry under the homestead laws of the United States. That pursuant to said order of March 13th, 1891, a hearing was had before the local land officers, commencing June 8, 1891, and concluded March 5th, 1892. That the said local land officers erroneously, without warrant or authority of law, and upon the 43
mistaken and erroneous assumption that in said contest of the defendant Hyde against the said Sioux half-breed scrip location No. 19 D. there was incurred cost of taking testimony, when in truth and in fact there were no such costs as aforesaid, and on the false testimony produced by those opposing the defendant Hyde that there were such costs and that he refused to pay them, decided that because he had not paid such alleged 44
costs he was not a contestant under the Act of May 14th, 1880, and rejected his said application to enter said lands as a homestead.

18. That the defendant Hyde paid all expenses, fees and costs of his said contest against the said location of Sioux half-breed scrip No. 19 D., and all that was demanded of him by the local land officers or otherwise, and the undisputed evidence on said last mentioned hearing showed this to be the fact; and no objection was ever raised 45
or made on account of the alleged costs of taking testimony in his said contest against the said Sioux half-breed scrip No. 19 D. until said last mentioned hearing. That at that time the said objection was not made or raised by the government of the United States, but was raised by strangers to the record prior to that time.

19. That the defendant Thomas W. Hyde duly appealed from the said decision of the said local land officers to the Hon. Commissioner of the General Land Office, and he, on the 9th day of September, 1893, (erroneously and contrary to law) affirmed the said decision of the local land officers.
46 That the defendant Thomas W. Hyde duly appealed from the said decision to the Hon. Commissioner of the General Land Office unto the Hon. Secretary of the Interior, and he, on December 21st, 1894, held and decreed that the sole question before him on the said appeal of the defendant Hyde was whether or not he was a contestant under the Act of May 4th, 1880, and entitled to a preference right to enter said land as a homestead, and wrongfully and unlawfully, and without authority
47 of law decided, on the ground that the defendant Hyde had not paid the costs of taking the testimony in the defendant Hyde's said contest against the said Sioux half-breed scrip location when there were no such costs as aforesaid, that he was not a contestant under the Act of May 14, 1880.

20. The defendant Hyde further alleges and shows to the Court that pursuant to, and in accordance with the said unwarranted decisions of the Secretary of the Interior, and in derrogation
48 of the rights of the defendant on the 21st day of October, 1885, a patent from the United States to said S. E. 1-4 of the N. W. 1-4 of said section 30, erroneously and without authority of law, issued unto the said Emil Hartman.

21. That the defendant by his contest of the said Sioux half-breed scrip location No. 19 D., and the payment by him of all the costs and expenses incident to said contest and his procuring of the

cancellation of said location became, and was, entitled to a preference right to enter said land, and by virtue thereof and of the premises was and now is the equitable owner thereof, and that but for the said erroneous, illegal and unwarranted decisions of the local land officers, Commissioner of the General Land Office, and of the Secretary of the Interior as aforesaid, the patent to said lands, S. E. 1-4 of N. W. 1-4 of section 30, would long since and prior to the issuing of the same to the said Emil Hartman, as of right it should have been issued to the defendant Thomas W. Hyde. 49

22. The defendant further alleges that each and all of said parties including the plaintiff, had knowledge and notice of the claims and rights of the defendant Hyde prior to the issuing of said patent to the said Hartman, and at the time they respectively acquired their and each of their alleged interests in said lands and of said erroneous, illegal and unwarranted rulings and decisions of the said land officers. 50

23. The defendant further alleges that the plaintiff claims to be the owner of the said S. E. 1-4 of N. W. 1-4 of said section 30.

24. The defendant further alleges that Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company, a corporation organized under the laws of the State of Minnesota, each claim to have an interest in said S. E. 1-4 of N. W. 1-4 of section 30, but the nature, character and extent of each and all of said 51

claims the defendant is unable to state with greater particularity, and that each and all of said last mentioned parties derived and acquired whatever interest they all and respectively have with knowledge and notice of the defendant's rights as aforesaid.

52 25. WHEREFORE, the defendant prays that the Court order that each and all the said parties be required to make and file an answer to the defendant Thomas W. Hyde's counterclaim within such time as the Court may direct, and that the defendant Thomas W. Hyde have judgment decreeing that all of said parties may be adjudged to hold the title to said S. E. 1-4 of N. W. 1-4 of said section 30, in trust for the use and benefit of the defendant, and further order and decree 53 that the title to said lands be divested out of the plaintiff and the said other defendants, and vested in the defendant Thomas W. Hyde, and for such other relief as may be just and equitable.

JOHN JENSWOLD, JR.,
Attorney for Thomas W. Hyde.

JOHN BRENNAN,
Of Counsel.

54

STATE OF MINNESOTA, COUNTY OF LAKE. —ss.

Jno. Jenswold, Jr., being duly sworn upon oath says that he is attorney for defendant Hyde in the foregoing entitled action; that he has read the foregoing answer and counter-claim and the same is true to the best of his knowledge, information and belief, and that the reason why this veri-

fication is not made by said Hyde is that he is absent from the County of St. Louis, Minn., wherein resides this affiant, his attorney.

JNO. JENSWOLD, JR.

Subscribed and sworn to before me on this 21st day of April, 1896.

W. G. JOERNS, 55
Notary Public.

(Notarial Seal.)

EXHIBIT "A."

Department of the Interior,
General Land Office. 56
Washington, D. C., Nov. 14th, 1885.

Register and Receiver,
Duluth, Minnesota.

Gentlemen:—On the 16th of June, 1883, Frank W. Eaton, attorney in fact, filed Sioux half-breed scrip No. 19 letters D. and E. issued to Orille Moreau upon a tract of unsurveyed land described by metes and bounds. It is stated that when this tract of land is officially surveyed the filing made with scrip 19 D. will embrace the W. 1-2 of N. W. 1-4 of Sec. 29, and the S. E. 1-4 of N. E. 1-4 and the N. E. 1-4 of S. E. 1-4 of Sec. 30, and the filing made with 19 E. will embrace the S. W. 1-4 of N. E. 1-4 and E. 1-2 of N. W. 1-4 and S. W. 1-4 of N. W. 1-4 of Sec. 30, Twp. 63 N. R. 11 W. 4th principal meridian. 57

On the 31st of October, 1884, the Register transmitted the applications of Angus McDonald

and Thomas W. Hyde by their attorneys, Messrs. White & Brown, to respectively contest said locations upon the ground that the scripee never made any improvements whatever on said land either in person or by an agent or attorney, and that said land at the date of the attempted location, was
58 unsurveyed and belonged to that class of land only locatable with such scrip after the scripee shall have made improvements upon the same. In support of this statement they submitted copy of an affidavit by the scripee in which she states that she never a any time made, constituted or appointed Frank W. Eaton her true and lawful attorney, and that she never at any time either directly or indirectly in any manner gave him any authority to select and locate any lands with said pieces
59 of scrip, or to make any improvements upon the lands in question, or upon any other lands for her use and benefit.

On the contrary said Eaton, through his attorneys Curtiss and Bardett, submitted certain papers in support of the legality of said locations, including certified copies of two powers of attorney executed apparently by said scripee and her husband (original powers on file in this office with location papers) which authorized him to select and locate
60 each piece of said scrip 160 acres of public land and if the land so selected be unsurveyed, to make thereon in her stead and for her personal use and benefit, the improvements necessary to the proper location of the scrip upon unsurveyed land. Mr. Eaton claims, and it appears from the papers submitted and the locations above referred to, that he, under the authority thus vested in him by said scripee and her husband, made valuable improvements upon the lands in question and located the

same with said pieces of scrip in entire good faith and in full compliance with the requirements of the law relating to the location of this class of scrip and the regulations of this office prescribed thereunder. Therefore he requests that the applications of said McDonald and Hyde for a hearing in this matter be rejected. 61

In view of the conflicting statements respecting the legality of these locations, I deem it proper that a hearing should be had that the respective parties may have an opportunity to submit such proof as they have in support of their allegations, and that this office may be possessed of all the facts possible in the matter, and the same is hereby ordered.

You will notify all parties in interest of the time and place of hearing, and at the proper time 62 thereafter you will transmit to this office the testimony taken thereat with your joint opinion thereon.

Very respectfully,

S. M. STOCKSLAGER,

Asst. Commissioner.

63

EXHIBIT "B."

U. S. Land Office, Duluth, Minn.

Dec. 17th, 1885.

In the matter of S. H. B. scrip No. 19 letter E. by Frank W. Eaton, the attorney in fact of the scripee Orille Moreau, upon lots 1 and 2 southwest quarter of north-east quarter, section 30, township 63 north, range 11 west, on the 21st day

of July, 1885, you are hereby advised that upon the allegations of Angus McDonald and Thomas W. Hyde, that the above named scripee never made any improvements whatever upon west half of north-west quarter section 29, and south-east quarter of north-east quarter and the north-east quarter of the south-east quarter of section 30, of said
64 township 63, range 11 west, and the allegations of said scripee that she never at any time made, constituted or appointed Frank W. Eaton her true and lawful attorney, or in any manner gave him any authority to select and locate any lands with said piece of scrip, or to make and build improvements on the land in question or upon any land for her use and benefit, the Honorable Commissioner of the General Land Office, by letter "C" of November
65 14th, 1885, instructed the Register and Receiver of the local land office to inquire into and determine the truth of those allegations. Accordingly you are summoned to appear at this office on Tuesday, April 6th, 1886.

G. G. HARTLEY, Register.
E. G. SWANSTROM, Receiver.

To White & Reynolds,
Attorneys for Hyde and McDonald and Moreau,
66 Duluth, Minn.

EXHIBIT "C."

U. S. Land Office, Duluth, Minn.
Dec. 17th, 1885.

In the matter of S. H. B. scrip No. 19 letter D. by Frank W. Eaton, the attorney in fact of the

scripee, Orille Moreau, upon lots 3, 5 and 6, south-east quarter of north-west quarter section 30, township 63, north range 11 west, on the 21st day of July, 1885, you are hereby advised that upon the allegations of Thomas W. Hyde and Angus McDonald, that the above named scripee never made any improvements whatever upon lots 3, 5 and 6, and south-east quarter of north-east quarter of section 30, of said township 63, range 11 west, and the allegations of said scripee that she never at any time made, constituted or appointed Frank W. Eaton her true and lawful attorney, or in any manner gave him any authority to select and locate any lands with said piece of scrip, or to make and build improvements on the land in question or upon any land for her use and benefit, the Honorable Commissioner of the General Land Office, by letter "C." of Nov. 14th, 1885, instructed the Register and Receiver of the local land office, to inqurie into and determine the truth of those allegations. Accordingly you are summoned to appear at this office on Tuesday, April 6th, 1886.

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G. G. HARTLEY, Register.
E. G. SWANSTROM, Receiver.

To White & Reynolds,
Attorneys for Hyde and McDonald
and Moreau,
Duluth, Minn.

69

EXHIBIT "D."

"H." Department of the Interior

Doc. 1.-Case 681. General Land Office.

Wash. D. C., Aug. 4, 1888.

Thomas W. Hyde and Angus McDonald,

70

vs.

Frank W. Eaton, Attorney in fact for Orille Stram, nee Moreau.

S. H. B. Scrip 19 D. and 19 E.

Register and Receiver,
Duluth, Minn.

Gentlemen:—I have considered the above entitled case appealed by the contestants from
71 your decisions in favor of the defendant.

The record shows that June 16th, 1883, Orille Stram nee Moreau, a Sioux half-breed Indian, by her attorney in fact, Frank W. Eaton, filed in the Duluth, Minn., local land office, Sioux half-breed scrip No. 19 D. and 19 E., each for 160 acres, dated Nov. 24th, 1856, issued to said Orille Stram nee Moreau, under the act of July 17, 1854, U. S. Stats. at large, Vol. 10, p. 304, by virtue of which said
72 Eaton located, as such attorney in fact for said Stram 320 acres of unsurveyed land, and that on July 21st, 1885, said locations were adjusted by the local land office at Duluth, Minn., and approved and posted by this office Sept. 9th, 1885, to embrace lots 3, 5, 6, and S. E. 1-4 N. W. 1-4 Sec. 30, T. 63 N., range 11 W., as adjusted to the location made under said scrip 19 D., and under scrip location 19 E. to embrace lots 1 and 2, and S. W. 1-4 N. E. 1-4 and N. W. 1-4 S. E. 1-4 same section.

On July 20th, 1885, Angus McDonald presented a pre-emption application for lot 2, N. 1-2 S. E. 1-4 and S. W. 1-4 N. E. 1-4 of said section, which you rejected because the N. E. 1-4 S. E. 1-4 is denominated swamp and overflowed land, and as to the remaining tract so applied for, because the date of settlement alleged in the application does not antedate the unadjusted scrip location No. 19 E. At the same day and date you also rejected a like application presented by Thos. W. Hyde for lots 5 and 6, S. E. 1-4 N. W. 1-4 and N. E. 1-4 S. W. 1-4 of the same section, for the reason that the alleged statement does not antedate the unadjusted scrip location No. 19 D. 73

On Nov. 14, 1885, upon the application of the contestants in the case, a hearing was ordered by this office on the allegation "that the scripee never made any improvements whatever on said land, either in person or by an agent or attorney and that the said land, at the date of the attempted locations, was unsurveyed and belonged to the class of land only locatable with such scrip after the scripee shall have made improvements upon the same." 74

And in support of these charges, there was submitted a copy of an affidavit made Oct. 9, 1884, by the scripee in which she denied ever having given, either directly or indirectly, said Frank W. Eaton a power of attorney, or any authority of any kind to locate any land with said scrip, or to erect buildings and make improvements upon the land in controversy, or upon any other land for her use and benefit. 75

In refutation of such denial by the scripee the defendant's attorney in fact filed copies of two powers of attorney given to him, said Eaton, by

said scripee and her husband, May 25th, 1883, conferring upon him the necessary power and authority to locate said scrip, and to make the improvements required by said act of July 17th, 1854, upon any land subject to location by said scrip, and to do any other act necessary to be done in the
76 premises, in order to secure a permanent and bona fide location, in the same manner as if done by them personally.

A trial was had April 6th, 1886, resulting in a judgment as stated. In their appeals the contestants assign six specifications of error, as follows, to-wit: 1st. The Register and Receiver had no authority to render a decision upon the law or facts in the case. 2nd. Their so-called decision is contrary to the evidence. 3rd. It is contrary
77 to the law. 4th. The so-called decision treats the case as if the controversy was between the scripee and her attorney in fact. 5th. In the so-called decision, the vital question in the case is not passed upon, namely, whether the land involved contained improvements made by or under the personal supervision or direction of the scripee, and also for her personal use and benefit. And 6th. In finding that a confirmatory deed made between two of the parties to a fraudulent
78 entry of government land bars the right of subsequent bona fide applicants.

Pending the foregoing proceedings Fred L. Huntress filed in the local land office at Duluth, Minn., an application to contest the S. H. B. S. locations made by said Eaton, as attorney in fact for the scripee above mentioned.

This application was transmitted by the Register May 5th, 1887, to this office for its consideration and action and was returend Nov. 29, 1887,

with instructions that it be held subject to the final disposition of the case at bar. Accompanying the said certificates or scrip, and applications to locate the same are what purports to be the original powers of attorney, given by the scripee, and her husband, May 25th, 1883, to said Frank W. Eaton, and an affidavit by the latter, with each application, stating that, as such attorney, he caused to 79
be built upon each of the tracts located on as described heretofore, a house 14 by 16 feet, one story high of timber, covered with split shingles, with doors and windows, and has also had cleared ready for cultivation one-half an acre of each tract, and that these improvements were made under the personal direction of said Orille Stram, and for her personal use and benefit under the authority of and by virtue of the said power of attorney. Ac- 80
companying the records of the case are what also purports to be the original powers of attorney, given May 25, 1883, by the said Orille Stram and her husband, to Leonidas Merritt, granting to him full power to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota, which they then owned, or may hereafter acquire, or become interested in, by virtue of the location of said scrip, to prosecute and defend any suits at law in the courts of said State, 81
and to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, by deed, conveyance, demise or lease in the same manner as if performed by them individually.

There are also filed with the records, copies (certified) of two warranty deeds, dated July 2, 1883, and executed in the name of said Orille Stram, and her husband Roman Stram, by Leonidas Merritt, under and by virtue of this power

of attorney referred to, conveying, for the nominal consideration of $25,000 in each to Edward Byrne, James N. Powers and Joseph Clement, an undivided one-third interest in and to all the land embraced in said scrip location and involved in this controversy. There are also filed in the case, certified copies of two warranty deeds, bearing
82 date July 6th, 1883, executed in the same manner by the same parties of the first part, conveying to Frank W. Eaton of Duluth, Minn., for the nominal consideration in each, of $25,000, an undivided (2-3) two-thirds interest in and to the said tracts of land.

On the 28th day of August, 1883, Jos. Clement, one of the grantees above referred to, it appears by certified copies, also filed in evidence, of
83 two deeds of warranty, conveyed to one Nicholas Lastnerf, of Milwaukee, Wisconsin, for the nominal consideration in each of $250, his undivided one-ninth interest in and to said tracts, and the next day August 29th, 1883, as shown by certified copies filed with the record, James H. Powers, executed two similar deeds, conveying to said Lansterf for the nominal consideration of $350 in each, all his undivided one-ninth interest in and to said land.

84 A certified copy of a quit claim deed executed Aug. 29, 1894, by Leonidas Merritt, under and by virtue of his power of attorney in the name of Orille Stram and her husband, is filed also in which for the consideration of one dollar they released and quitclaimed to James H. Powers in order to correct an imperfect description contained in the prior warranty deed of July 2, 1883, between said parties of the first part and Edward Byrne, James H. Powers and Joseph Clement, all

their interest in and to the undivided one-ninth interest, previously conveyed to said Powers of the N. E. 1-4 N. W. 1-4, S. 1-2 N. W. 1-4 and the S. W. 1-4 of N. E. 1-4 of said Sec. 30, and the next day Aug. 30, 1884, said Powers released and quitclaimed to said Nicholas Lansterf, for the consideration of one dollar, as shown by a certified copy 85
of a quitclaim deed, executed on that day between said parties, in order to correct the mis-description above referred to, all his interest in and to an undivided one-ninth interest in the tract last referred to.

The 26th of Sept., 1884, as shown by a certified copy of a quitclaim deed filed with the case, the said Orille Stram, her husband, by Leonidas Merritt, under and by virtue of his power of attorney, released and quitclaimed to said Joseph Clement, 86
for the purpose of correcting a mis-description in a warranty deed, dated July, 1883, between said parties of the first part and Edward Byrne, James H. Powers and Joseph Clement, all their interest in and to the undivided one-ninth interest in the N. E. 1-4 N. W. 1-4 S. 1-2 N. W. 1-4 and S. W. 1-4 N. E. 1-4 of said Sec. 30. There is no record evidence offered that said Clement ever executed a quitclaim deed of his interest in the last named tract, as did Powers, of his interest in the same 87
tract, in order to rectify the alleged error in description to said Lansterf.

It will be observed that, as far as the facts presented disclose Powers and Clement each divested himself of his one-ninth interest in both these tracts to Nicholas Lansterf; that Bryne retained his one-ninth interest, and Frank W. Eaton his two-thirds interest, as attorney in fact for the

scripee, and that up to the trial of this case, as far as the record discloses, such was the state of the several parties named, and their interest in and to any of the land in question.

The several deeds of conveyance and release conferred no greater title upon the grantees than
88 the grantors had, which was simply a right to these tracts of land subject to the final adjudication and approval of these locations.

Prior, however, to the trial, the said Orille Stram, and her husband Roman Stram, on March 31st, 1886, joined in a deed of confirmation, ratifying and confirming all and singular the acts, as attorney in fact of the said Frank W. Eaton and Leonidas Merritt, in the premises relating especially to the tracts of land involved in this case.

89 The evidence related at the hearing, I think, established by a clear preponderance, the fact that, said Eaton by virtue of his power of attorney, employed Edward Byrne, to make the improvements upon the respective tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter——Eaton admits that the power of attorney given to him by said scripee was executed in blank, and that he never saw such scripee until March 31st, 1886,
90 never saw the land himself and did not know whether said scripee ever saw it or not, and there is no other evidence on that point. The deed of confirmation above referred to, appears, as far as Eaton and the scripee are concerned, to remove any objection to the former's acts, prior thereto, under and by virtue of the said power of attorney.

The affidavits accompanying the placing of said scrip, appear to fulfill the requirements of the Circular of March 26th, 1878.

The contestants herein did not claim settlements under their respective applications, to make pre-emption filing upon those tracts of lands, until more than a year after the location of the scrip involved in the case.

They admit, in their testimony, that the improvements placed upon these tracts, the year 91
before, they found in an impaired condition, August 20th, 1884, when they went thereon. The only other question, it appears, that it left for me to pass upon, touching the legality of these locations, since it is upon the charge of their illegality that the case is based, is, whether the power of attorney given to Frank W. Eaton by the scripee, by virtue of which he made the locations, could carry with it under the law, the power and authority as well to make the improvements required by law. There 92
is evidence sufficient to raise suspicion of bad faith, between some of the parties herein, having an alleged interest in the result of this suit, but it in nowise affects any interest of the government.

The law expressly prohibits assignments of S. H. B. S. No provision is made, in express terms, in the act authorizing the issue of said scrip, for the location of it by attorney, "upon any of the unsurveyed lands, not reserved by Government, 93
upon which they (grantees of said scrip) have respectively made improvements," but a general power to so locate it, appears to be implied, and to have been uniformly acted upon by the Department.

The government is not called upon to adjudicate questions in cases, except where it is an interested party. The legality of these locations is in issue in this case, and as in the case of Allen et

al. vs. Merrill et al., decided by the Commissioner Dec. 2, 1887, and reported in 14 Copp. L. C., 243, the evidence shows conclusively that the scripee never saw the land, or the improvements or had anything whatever to do with either.

The circular referred to requires that the In-
94 dian shall have a direct connection with the land and claim the same for his personal use. Following the ruling in the case above cited, I must reverse your decision and hold said locations for cancellation, subject to the right of appeal.

Advise the parties accordingly.

Respectfully,

T. J. ANDERSON,
Assistant Commissioner.

95

STATE OF MINNESOTA, COUNTY OF LAKE. In District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff,

96 vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants.

33

ANSWER.

Now come the above named defendants, Leonidas Merritt, Merrill M. Clark and Richard H. Fagan, and answer the complaint of the plaintiff in the above entitled cause and deny each and every allegation, matter and thing in said complaint contained, save and except as the same are hereinafter specifically admitted. 97

I.

1. These defendants here answering, deny that the plaintiff is the owner, or entitled to the possession of the land described in the complaint, or any part or portion thereof, or of any right, title or interest therein.

2. That as to whether the plaintiff and the Bishop Iron Company, or either of them are corporations as alleged in said complaint, these defendants deny that they have any knowledge or information sufficient to form a belief. 98

3. These defendants deny that said lands are or were at the time of the commencement of this action, or at any time since have been vacant or unoccupied, but allege that they jointly, with the other owners of undivided interests, to-wit: Frank W. Eaton and Margaretha Lonstorf, have been in possession of said lands for about fourteen years last past, through their agents and tenants, who, under their authority and direction have been in the actual occupation of said lands during said time and were so at the time of the commencement of this action. 99

4. These defendants admit that the defendants Clark and Fagan claim some right, estate

and interest in said lands, but deny that the same is claimed wrongfully or unlawfully, and deny that the same are unfounded in law and in fact, and allege the fact to be, and these defendants claim and allege that the defendant Clark, is the owner of an undivided one-fourth of said premises; that the defendant Fagan is the owner of an
100 undivided one-sixth of said premises and the defendants Eaton and Lonstorf are the owners of the remainder thereof, and that they were such owners at the time of the commencement of this action.

5. These defendants further answering said complaint, both by way of defense and of setting forth the claims of the defendants Clark and Fagan to the title to said premises, allege that on the 17th day of July, 1854, the Congress of the
101 United States passed an act entitled, "An Act to Authorize the President of the United States to cause to be surveyed a tract of land in the Territory of Minnesota belonging to the half-breeds and mixed bloods of the Dacotah or Sioux nation of Indians, and for other purposes," by which act the President of the United States was and became authorized to exchange with the half-breeds and mixed bloods of the Dacotah or Sioux nation of Indians, who were entitled to an interest therein
102 for the tract of land lying on the west side of Lake Pepin and the Mississippi River, in the then Territory of Minnesota, which had been theretofore set apart and granted for their use and benefit by the Ninth Article of the Treaty of Prairie du Chien on the 15th day of July, 1830, and for that purpose by the said act, the President of the United States was authorized to cause to be issued to the said persons, on the execution by them or by the legal representatives of such as were min-

ors, of a full and complete relinquishment to the United States of all right, title and interest according to such form as should be subscribed by the Commissioner of the General Land Office in and to said tract of land or reservation certificates or scrip of the amount to which each individual would be entitled of said land or reservation, pro rata among the claimants, which said certificates or scrip, it was by said act provided, might be located upon any of the said lands within said reservation not then occupied by actual bona fide settlers of the half-breeds or mixed bloods, or such other persons as had gone into said territory by authority of law, or upon any other unoccupied lands of the United States subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by government, upon which they should respectively make improvements. It being further provided in said act that said certificates or scrip should not embrace more than 640 acres nor less than 40 acres each and that the same should be equally apportioned, as nearly as practicable among those entitled to an interest in said reservation. That it was further provided in and by the terms of said act, that the President be and was authorized to cause to be ascertained the number of the half-breeds and mixed bloods who were entitled to participate in said grant or reservation, and to issue the scrip or certificates provided for in said act. That the said act of Congress was approved July 17th, 1854 and became in force on and after said date, and the same is codified and published in the Tenth Volume of the United States Statutes at Large on page 304 and is hereby made a part of this complaint as fully and in all respects as though the same were set forth here in haec verbae.

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6. That pursuant to the provisions of said act, the President of the United States caused the number and names of the said half-breeds and mixed bloods who were entitled to participate in the benefits of said grant or reservation to be ascertained; and the said persons so entitled to the
106 benefit thereof duly executed a full and complete relinquishment to the United States, of all their right, title and interest in the manner prescribed by the Commissioner of the General Land Office, in and to said tract of land or reservation, and the said tract of land or reservation thereby became fully relinquished to the United States government which proceeded to open up the same for disposition and settlement, in accordance with the public land laws of the United States.

107 7. That in consideration of said relinquishment to the United States by the said persons entitled to the benefits of said reservation of the said lands or reservation, and of all their right, title and interest therein to the said United States, pursuant to the provisions of said act, and in manner and form prescribed by the land department of the United States, the President of the United States caused to be issued to the several parties entitled to the benefits of said act, certificates or scrip for
108 the same amount of land to which each of such individuals were found to be entitled in case of a division of the said grant or reservation, which said certificates or scrip were, under the provisions of said act, locatable upon any of the lands within said reservation not then occupied by actual settlers of the classes mentioned in said act, or upon any other unoccupied lands of the United States subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved

by the government, upon which they should have respectively made improvements.

8. That one of the persons entitled to the benefits of said act, and entitled to the benefits of said reservation, and who joined with others of her nation in surrendering to the United States said reservation, and who executed due and proper relinquishment thereof, was one Orillie Moreau, a half-breed of the said nation, who afterwards intermarried with one Roman Stram. 109

9. And that under and by virtue of the said Act of Congress, and of the interest and rights which the said Orillie Moreau had in said reservation and lands at the time said act became in force, the said Orillie Moreau was and became entitled to certificates or scrip, under the provisions of said act, entitling her to have and take, instead of the rights which she surrendered in and to said reservation, at least three hundred and twenty acres of government land of the classes mentioned and specified in said act, and that on or about the 23rd day of November, 1856, certificates or scrip, such as are provided for in and by the terms of said act were duly issued to said Orillie Moreau, numbered 19 E. and 19 D., entitling the said Orillie Moreau to take, have and reserve of the public lands of the United States, of the classes mentioned in said act, three hundred and twenty acres of such lands, each of said certificates being for one hundred and sixty acres. 110 111

10. That thereafter and on the 16th day of June, A. D. 1883, the said Orillie Moreau, then Orillie Stram, never having theretofore made any use of said certificates or scrip, and the same never having in any manner been extinguished or satis-

fied, through the defendant Frank W. Eaton (who had theretofore been by her duly empowered as her attorney in fact for that purpose) presented the said scrip at the local land office in Duluth, Minnesota, and then and there made application to locate the same on certain unsurveyed lands of
112 the United States, in the said land district in which the said land office was located, and did enter and take said land under and by virtue of said scrip, the lands for which said application was made, as aforesaid, was in said application described by metes and bounds as follows: Starting at the quarter post on the east line of section 25, township 63 north of range 12, west, and thence running east 240 rods for a place of beginning; thence south 80 rods, thence east 80 rods, thence
113 north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, the same being located under scrip number 19 E. Also commencing at the quarter post on the east line of section 25 in township 63 north of range 12 west; running thence north on said section line 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence
114 south 80 rods, thence west 240 rods to the place of beginning. The same being located under scrip 19 D., each of said locations embracing 160 acres of land, the same not being lands reserved by the government of the United States for any purpose whatsoever. The said scrip and the said application to locate said lands thereunder, being then and on that day filed in the said local land office at said Duluth, Minnesota, together with a diagram or plat of the said lands so located, embracing

therein such descriptions thereof as were sufficient to duly and properly designate the same; and that prior to the location of said scrip upon said land as above stated, substantial improvements had been made thereon by and under the authority of and for the benefit of the said Orillie Stram; that the said Orillie Stram in all respects complied with the said Act of Congress, and with the methods, rules and regulations prescribed by the land department of the United States, for the location and entry of such lands under said scrip. 115

11. That thereafter, on or about the 20th day of July, 1885, said lands having been duly surveyed and platted, the plat and survey of said township and of the said lands, made by and under the authority of the government of the United States, was duly filed in the local land office at 116
said Duluth, Minnesota, and thereupon and on the 21st day of July, 1885, upon application of the said Orillie Stram, acting by and through her duly constituted attorney in fact, said certificate of Sioux half-breed scrip number 19 D. was adjusted to lots three (3), five (5) and six (6) and the southeast quarter of the northwest quarter of section 30, township 63 north of range 11, west; said certificate of Sioux half-breed scrip number 19 E. was adjusted upon lots one (1) and two (2) and the 117
southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section 30, township 63, north of range 11, west, being the same lands hereinbefore described by metes and bounds, and then and there and on that day said certificate or scrip was duly located upon said surveyed lands, as above described, and the said lands as surveyed lands were duly taken, entered and appropriated under and by virtue of said

certificates or scrip. That both on the 16th day of June, 1883, as hereinbefore set forth, when the said scrip or certificates were filed and located upon the said lands as surveyed lands, and on the 21st day of July, 1885, when they were adjusted to and located upon said lands as surveyed lands,
118 the entry and location thereof and the filing thereon and the application to locate said scrip thereon were duly and properly allowed by the local land officers at said Duluth, Minnesota, there being on neither of said dates, or at any time previous thereto, nor at any other time, any valid, adverse claims to said lands, or any intervening right of any other persons whomsoever thereto, and said lands being at said times, except under and by virtue of said certificates or scrip, unappropriated
119 government lands of the United States and of the class mentioned and set forth in the said Act of Congress, subject to location under said scrip or certificates, and on the last named date, to-wit: July 21st, 1885, Receiver's receipts and certificates of entry and filing and of the allowance of said application and the location of said scrip thereon, were duly and regularly issued and delivered at the local land office of said Duluth, Minnesota, to the said Orillie Stram, which were thereupon duly recorded in the office of the Register of
120 Deeds in the county in which said land was located, and have ever since remained of record therein.

12. And these defendants allege the fact to be that thereupon said scrip or certificates became satisfied and the obligations of the United States, in consideration of the surrender by said Orillie Moreau of her interest in said reservation, became discharged, and the said lands taken and

located upon said scrip or certificates, hereinbefore described, became from the first of said dates of entry and location segregated from the public domain and became henceforth the property and estate of the said Orillie Stram, and those claiming by, through and under her, without regard whatsoever to the issuance of any patent in form therefor by the government of the United States. 121

13. That through sundry mesne conveyances these defendants Merrill M. Clark and Richard H. Fagan have become owners of an undivided one-fourth and an undivided one-sixth interest, respectively, in and to said lands, and have succeeded to the ownership of the said undivided interests as aforesaid, of all the right, title and interest which the said Orillie Stram (formerly Orillie Moreau) at any time had in and to said lands, and that 122 the land described in the complaint is a part and portion of the said lands.

14. That about the time of the adjustment of the said scrip to the said surveyed lands and of the appropriation of the said lands as surveyed lands, to the satisfaction and extinguishment of said scrip, one Thomas Hyde made an application to make a pre-emption filing upon lots five (5) and six (6) and the southeast quarter of the northwest quarter of said section, which application was 123 denied by the local land officers at said Duluth, Minnesota, and on or about the same time one Angus McDonald made a like application on lot two (2) and the north half of the southeast quarter and the southwest quarter of the northeast quarter of said section, which application was also denied by the said local land officers at said Duluth, Minnesota, both on the grounds that the said lands had already been appropriated by the

location of said scrip thereon, and also that the applications of said Hyde and McDonald were not made in good faith but were made in fraud and in violation of the pre-emption laws of the United States, and were affected by a fraudulent and unlawful intent, rendering the same invalid, and
124 that it was duly and properly determined by the local land officers and sustained by departmental decision, that neither the said Hyde nor the said McDonald ever had or obtained any right whatsoever in or to the said lands by virtue of said pre-emption filings or by virtue of any subsequent proceedings on the part of said Hyde and McDonald, or either of them, to obtain said lands and that said pre-emption filings were void and invalid and contrary to the laws of the United
125 States, and that they, said Hyde and McDonald, thereby obtained no preference right of entry, or any rights of any character in and to said lands, or any part thereof; but that, notwithstanding the same, the said Hyde and McDonald made an attack upon the Land Department of the United States in or about the month of November, 1885, upon the said location of the said scrip or certificates of the said Orillie Stram upon said lands and of the entry of said lands thereunder, charging that the said Orillie Stram had never made any
126 improvements whatsoever upon said lands, either in person or by agent or attorney, and that the same, at the time of the said first filing thereof, as hereinbeofre set forth, were unsurveyed lands, and could be located only after such improvements had been, and supported the same by an affidavit which had by misrepresentation been obtained from the said Orillie Stram, in which she denied giving said power to said Eaton, or any

authority to locate the scrip or erect buildings and make improvements on the lands in controversy, or any land for her use and benefit, and that such charges on the part of said Hyde and McDonald culminated in a hearing thereon in the local land office at Duluth, Minnesota, on the 6th day of April, 1886, resulting in a decision of the said local land officers sustaining the said scrip locations, in which decision the said local land officers held, among other things: 127

That the scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the pre-emptors, Hyde and McDonald settled, and was adjusted to the surveys July 21st, 1885;

That the record contained duly executed powers of attorney from the scripee and her husband to Frank W. Eaton giving him full power to do all acts necessary to effect and secure permanent bona fide locations of the scrip; 128

That Eaton, under said authority, employed another to go upon the land and make suitable improvements, giving directions what improvements to make and how to make them, which improvements were made for Eaton and for the purposes claimed by him;

That the said scripee, while stating in said affidavit that she did not know Eaton and never authorized him to make improvements on the lands, did not appear at the hearing to testify in support of the charges made, and that she never asked that the location be cancelled and that the scrip be returned to her, but, on the contrary, between the date of said affidavit and the day of the hearing, executed and delivered a deed of confirm- 129

ation, acknowledging, ratifying and confirming all that had been done by Eaton as her attorney;

And further decided that there was nothing in the evidence to show that the scripee was misled or imposed upon by the said Eaton or his agents, nor to controvert the fact that the said
130 scrip locations were effected in conformity with the usual and accepted practice in such cases, and in accordance with the law and the rules of the Land Department, and held that the contestants had failed to make out a case and that the scrip locations should stand.

From that decision contestants Hyde and McDonald appealed to the General Land Office, assigning six specifications of error, among others, that the local land officers had treated the case
131 as if the controversy was between the scripee and her attorney in fact, whereas it grew out of a contest by third parties, between said Hyde and McMcDonald, who claimed to have shown that the scrip was fraudulent on the part of the scripee and her grantees and that the local land officers had failed to pass upon the question whether the land contained improvements made by or under the personal supervision or direction of the scripee and for her personal use and benefit, and erred
132 in finding that a confirmatory deed made between two of the parties could bar the right of subsequent bona fide applicants.

Pending said proceedings on appeal, other parties made application to contest the said scrip locations and also to contest the pre-emption claims of said Hyde and McDonald, which, under the instructions of the Commissioner of the General Land Office in August, 1887, were held subject to the final disposition of said appeal;

That upon said appeal the Commissioner of the General Land Office made his decision and found that accompanying the scrip and applications to locate the same, were two original powers of attorney given May 25th, 1883, by the scripee and her husband to Frank W. Eaton, and that with each application was an affidavit by said Eaton setting out that under said powers of attorney he had caused to be built upon each of the tracts upon which scrip was located, a house fourteen by sixteen feet, one story high, of timber covered with split shingles with door and windows; that he had also cleared half an acre of each tract and that said improvements were made under the personal direction of the said scripee and for her personal use and benefit, and further decided that in the record there was an original power of attorney given by the said scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces and parcels of land in the state of Minnesota which they then owned or might thereafter acquire or become interested in under and by virtue of the location of the scrip in question and prosecute and defend any suit at law in the courts of said state, and to grant, bargain, sell, demise, lease, convey and confirm said lands, or any part thereof by deed, conveyance, demise or lease, in the same manner as if performed by them individually; 133 134 135

And further decided that in the record were certified copies of warranty deeds, dated July 2nd, 1883, executed by said Leonidas Merritt in the name of the said scripee and her husband, under and by virtue of the power of attorney above mentioned, conveying to Edward Byrne, Joseph

A. Powers and Joseph Clement an undivided one-third interest in and to the lands embraced in said scrip locations involved in said controversy, the consideration named in said deed being $25,000; also certified copies of two warranty deeds, dated July 6th, 1883, executed in the same manner
136 by the same party, conveying to Frank W. Eaton an undivided two-thirds interest in and to said tract of land, the consideration named in each being $25,000. Also that Joseph Clement, one of the grantees of an undivided one-third interest, above mentioned, on August 28th, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being two hun-
137 dred and fifty dollars, and that on the next day, August 29th, 1883, as shown by certified copies on file, Joseph Powers, another of the grantees of an undivided one-third interest, executed two similar deeds, conveying to said Lonstorf his undivided one-ninth interest in and to said tracts, the consideration named being three hundred and fifty dollars in each deed; and also that the record contained quit claim deeds correcting faulty descriptions in said previous deeds, said decision holding that a two-ninths interest under said scrip loca-
138 tions had by said deeds vested in Nicholas Lonstorf, one-ninth in Edward Byrns and six-ninths in Frank W. Eaton.

The said commissioner further decided that said several deeds of conveyance conferred no greater title upon the grantees than the grantors had, which he held was simply a right to these tracts of land, subject to the final adjudication and approval of the locations; said commissioner

also in said decision found that prior to the hearing before the local land office, to-wit: On March 31st, 1886, the scripee, Orillie Stram, and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of the said Frank W. Eaton and Leonidas Merritt relative to the facts in question done and performed by them, under the respective powers of attorney given as hereinbefore described; 139

The said commissioner further determined in said decision that the record before him established by a clear preponderance of evidence the fact that said Eaton, by virtue of his power of attorney, employed Edward Byrns to make the improvements upon the respective tracts in question, and that Byrns procured the services of Powers and Clement to assist him therein; that Eaton admits 140 that the power of attorney under which he acted, was executed by the said scripee in blank and that he had never seen the scripee until March 31st, 1886; that he had not himself seen the land and did not know whether the scripee had seen it or not; that the deed of confirmation of the scripee appears, so far as she and Eaton are concerned, to remove any objection to the acts previously performed by the latter under and by virtue of the said power of attorney, and that the affidavits accompanying the location of said scrip appear to 141 fulfill the requirements of the circular of May 28th, 1878, as printed in the 5th Copp's Land Owner, 126;

The said commissioner further decided in said decision that the only other question left to pass upon, touching the legality of said scrip locations, was whether the power of attorney given by the said scripee

to Frank W. Eaton, by virtue of which he made the locations, could carry with it under the law, power and authority to make the improvements necessary as a prerequisite to valid location of the scrip on unsurveyed lands, and held that since the evidence showed that the scripee never saw
142 the lands or the improvements, nor had anything to do with the same personally, and since the circular above referred to required that the Indian should have direct connection with the land and claim the same for his or her personal use, that the scrip locations were not valid and should be cancelled as speculative and made with evident intent to evade the law, rather than comply with the legal requirements;

That an appeal was taken from the Gen-
143 eral Land Office to the Secretary of the Interior on or about the 4th day of August, 1888, by said Orillie Stram and Frank W. Eaton, her attorney in fact and the said parties in interest, it being assigned as specifications of error on said appeal, among other things, that the said Commissioner of the General Land Office erred in holding and deciding that there was any failure in manner, form or substance on the part of the scripee in locating said scrip numbered 19 E. and 19 D.
144 on the tracts of land selected by her, or in making the improvements required to be placed on unsurveyed lands by the Act of Congress approved July 17th, 1884, and in holding that improvements on unsurveyed land subject to appropriation under said act, must be made by or under the personal supervision and direction of the scripee, and be for his or her personal use and benefit, and that it must appear that the Indian has direct connection with the tract located and is claim-

ing the same for his own personal use, and in holding the law to be that the performance of conditions necessary to the valid location and satisfaction of the scrip certificates issued in conformity with said act, may not be lawfully delegated to and done by an agent empowered by and acting for the scripee, and in holding that the adjustment 145
to the lines of the public surveys of a scrip location theretofore made by an agent of the scripee on unsurveyed lands, though assented to and ratified by the scripee, does not constitute a valid appropriation of the tract, and in not finding and holding that at the time of the adjustment of said scrip to the lines of the public survey, no valid right under the laws of the United States had attached to said land adversely to said scrip, and in not holding that at the date of said adjust- 146
ment, no right adverse thereto had attached to said land, and said adjustment was in legal contemplation and intent a location on surveyed land, and hence in not requiring improvements as a condition precedent to a valid location, and in holding said scrip location for cancellation, and for failure to find and decide the questions in issue, both in law and fact, in favor of the title of the scripee;

That thereafter and on the 18th day of Feb- 147
ruary, 1889, the Hon. William F. Vilas, then Secretary of the Interior of the United States, decided said cause on appeal and held that the said scrip locations were invalid, which decision was afterwards on the 28th day of January, 1891, confirmed by the Hon. John W. Noble then Secretary of the Interior, it being also determined in the decisions of both Secretaries that neither Hyde nor McDonald, nor any person or persons whomsoever, had

any right, title or interest in or to said land, or any part thereof or any claim thereon, and that at no time, either intervening between said location of said scrip upon unsurveyed land and the time of the adjustment of said scrip to the same as surveyed land, or at any other time, had any
148 valid rights attached to said lands adverse to the said scrip locations, and assumed to determine and decide that the said lands were still public lands of the United States open to entry;

That the said Secretary of the Interior, Mr. Vilas in and by the decision above mentioned, held that the said scrip, being accompanied by two powers of attorney executed in blank, one giving to some one not then named power to locate the scrip and the other giving like authority to sell the
149 lands which might be located thereunder, operated as an assignment of the scrip and assumed that the same, after many years passing through different hands, lodged in the hands of Frank W. Eaton who filled up the blanks in the power of attorney and employed others to make slight improvements on the land, and located the scrip as the attorney in fact of Orillie Stram, the scripee, and that the other power of attorney was filled out in the name of Leonidas Merritt as the attor-
150 ney in fact who executed the conveyances; that the scripee never saw the land and had not seen Eaton at the time he acted for her as her attorney in fact and did not know that there was such a person, and assumed the fact that he had sold the scrip long prior to the location and had no personal interest in the land and that the improvements were not made for her personal use and benefit and that her actual interest in the land ceased when she disposed of the scrip, which the said

Secretary assumed that she did by virtue of said powers;

That said secretary in said decision found that said Orillie Stram, her husband joining, had ratified what had been done by her said attorneys in fact and found, or assumed, that said ratification was for a consideration, and held that such confirmation did not change the fact that the improvements and location, although made under the said power of attorney, were not under the direction and in the interest of the said scripee but in the interest of the acquisition of said land and in the interest of those who desired to acquire it through said scrip; 151

That in the decision of Secretary Noble, above referred to, a case confirming the decision of Secretary Noble, the case was not gone into in detail, Secretary Noble affirming the position taken by Secretary Vilas and also affirming the decision of the last named secretary that no other parties had acquired any valid, adverse rights whatsoever in and to said premises. 152

15. That said decision of the said Secretaries of the Interior rested upon a mistaken and erroneous interpretation and construction of the law of the United States under which said scrip locations were made; among others, in this, that the power of attorney under which said Eaton acted as the attorney in fact of said Orillie Stram in making said scrip locations and in filing said scrip and in entering said lands, was in blank in so far as the name of the donee in said power was concerned, when first executed by the said scripee, Orillie Stram, and hence void; that the improvements made upon said lands in connection with the first filing of the scrip thereon, were not made 153

by the said scripee Orillie Stram in person, or for her personal benefit and enjoyment and that she had no personal connection with said land and hence that the location of said scrip on said land was unlawful and invalid. That prior to the location of said scrip upon said land, said Orillie
154 Stram had executed a power of attorney, to-wit: To the defendant Leonidas Merritt, to sell and convey the lands which might be obtained under the said scrip, and hence that by means of the two powers of attorney, the one to locate and the other to sell, an assignment of the said scrip had been effected contrary to the provisions of the said statute, and hence that all proceedings had under the said power of attorney of the said Eaton to locate the said scrip were invalid; notwithstanding
155 that thereafter the said Orillie Stram had in all respects confirmed the said acts of the said Eaton as her said attorney in fact. That the said Eaton prior to the location of the said scrip had not seen the said scripee, Orillie Stram and did not know whether she had been upon the land personally or not, and hence that the entry and location of the land in her name and under said scrip was invalid. That said decision rested upon an erroneous and unsupported assumption of fact that said certificates in the name of said Orillie Stram were
156 disposed of by her under the two powers of attorney,the one to locate and other to sell,and executed by her in blank, which after many years, passing through different hands, lodged in the hands of said Frank W. Eaton, who filled up the power to locate the same with his own name and empowered other persons to make slight improvements upon the land, and thereupon located the scrip as the attorney for said Orillie Stram, and after-

wards filled, or caused to be filled, the blanks in the other power of attorney, with the name of the said defendant Leonidas Merritt, and that she, the said Orillie Stram, did not know at the time of the said acts of said Eaton, that there was such a person as said Eaton in existence. Whereas, in truth and in fact there was nothing in the records of said case, as the same was made before the said secretaries, to justify such conclusions and assumptions of fact; and whereas the same was and is contrary to the actual facts as then and there and since existing and appearing in said record, and whereas said conclusions of law and interpretations of the law as aforesaid were erroneous, mistaken and wrongful and contrary to the interpretation of said law, as made in numerous decisions of the land department and courts of the United States; the true facts being as established in said record without contradiction, that the said Orillie Sram did not make a sale of said scrip or certificates and never made any assignment thereof, and that shortly and but a few days before the filing of said scrip upon said lands, and desirous of obtaining lands that she might have the benefit thereof and sell and dispose of the same, after she should obtain the same, and receive the benefit thereof, she executed and delivered said power of attorney under which said Eaton acted in making said locations, and under which he acted in making and causing to be made the improvements upon said lands, which improvements these defendants allege were good and substantial improvements and in all respects satisfied the terms, letter and spirit of the law as found by the local land officers, and that they were made for the purpose and to the end that the said land

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should be acquired by and in the name of the said Orillie Stram, to be disposed of if she so desired by her or under her authority, after the same should be so obtained. That the said interpretation of the law by the said Secretaries of the Interior, that the said improvements had to be
160 made in person or under the personal direction of or for the personal benefit and enjoyment of the said scripee, Orillie Stram, was erroneous, such law only requiring that as to unsurveyed lands improvements be made, to the end that the same should be a notice to other parties that claims had been made to such lands under such scrip or certificate, to prevent others from innocently entering upon said lands and making settlement thereon in ignorance of the claims of
161 said parties under said locations, and to put all such persons on inquiry, and that in truth and in fact it was and is immaterial whether such improvements were placed upon said lands in person by the said scripee, and that, so long as improvements were made, whether the same were made by said scripee in person, or under her immediate direction, or purchased from others who had relinquished their interest therein, the same in all respects satisfied the demands of said law.

162 16. Further these defendants allege thaf it was entirely immaterial whether the name of the donee in the said power of attorney was filled in at the time of the first execution thereof or not, inasmuch as the said power of attorney, as was shown without dispute, was delivered to the said Eaton by the said Orillie Stram, through her agents, for the purpose of making said locations in the name of said Orillie Stram, from which locations and the sale of the lands thereafter she

expected to derive a consideration, and inasmuch as said locations were in fact made in her name, and inasmuch as the said scrip or certificates in the name of the said Orillie Stram, were, by the said Eaton, acting as said attorney in fact, duly entered, filed and located said lands. Further, that at the time of the location of said scrip upon 163
said lands on July 21st, 1885, at the time when the same were adjusted to said lands as surveyed lands, the plat of the survey of said township had been made and filed and there being at that time no valid adverse claims to said lands or any part thereof, no improvements whatsoever were required in order to render valid the location of said scrip upon said lands. And it should have been by the said secretaries held, as in fact the law is, that such entry and such location of said land was 164
in all respects valid, without regard to any improvements whatsoever, no other interests of any other parties whomsoever and no adverse claims by which the said lands in the time intervening between the first filing of said scrip on said lands as unsurveyed lands and the filing and adjustment thereof upon and to the same on said last named date as surveyed lands;

That it was error to hold and so construe the law that in case the said Orillie Stram desired to 165
sell and dispose of said lands after they should be obtained in order to derive the benefit from said sale to which she was entitled under the said certificates or scrip for which she had theretofore paid the United States by the surrender of her rights as aforesaid in and to said reservation, that it was invalid for her to execute a power of attorney, whether in blank or otherwise, to sell the said lands after the same should be thus lo-

cated, even before the said scrip was filed upon said lands, and it was an erroneous interpretation and construction of said act and the law applicable thereto on the part of the said Secretaries of the Interior and contrary to the previous rulings and practice of the land department, to hold that by
166 said transactions a sale and assignment of the scrip was effected, or to hold that the acts of the said attorney in fact, said Frank W. Eaton, in the location of said scrip, by reason of said acts on the part of said Orillie Stram, were invalid, inasmuch as the said scrip by the said attorney in fact was located upon said lands and the said lands were taken in the name of said Orillie Stram and subject to her disposal;

That the said decisions and interpretations
167 of the law by the said Sectaries of the Interior in holding that the said improvements were not made in the interest of the said scripee was erroneous in that the same being made in the interest of the entry of said lands for and in the name of the said scripee and the locations of said scrip thereon were in law made for the benefit and in the interest of the said scripee and in support of said entry, and the law does not require such scripee to make the same in person nor that the same
168 be made for her personal use, nor that she should have direct connection with the land;

That the decision of the said Secretaries of the Interior in holding that after the said scrip had been located upon said lands in the name of said scripee, Orillie Stram, the deed of confirmation thereof given by the said Orillie Stram, her husband joining, which was given to said Frank W. Eaton on or about March 31st, 1886, was ineffectual, were erroneous and based upon a mistaken

construction of the law, inasmuch as said lands having been entered in the name of said Orillie Stram, whether the said power of attorney to sell and convey the same was invalid or not became immaterial, for the said scripee herself, as found by said decisions, confirmed the acts of the said attorney in fact to sell and convey said lands, and conveyed the same herself to those who were claiming thereunder; and erroneous further in this that it was entirely competent and lawful for the said scripee to act by and through another as her attorney in the selection and location of said lands, and that if said power of attorney to sell and dispose of the same was invalid, the said lands still remained the property of the said scripee until she executed and delivered said confirmatory deed and up to the time of said decision no valid, adverse claims attached to said lands. 169 170

17. That under and by the erroneous decisions of the said Secretaries of the Interior it was attempted to throw said lands open for pre-emption or for the location of other scrip, as public lands of the United States, and that by virtue of said erroneous decisions, the land department of the United States assumed to allow, subsequent to the rendition of said decisions, other parties to come in and apply for the said lands, notwithstanding the fact that during all of this time these defendants Clark and Fagan and their associates in the ownership of undivided interests in the said lands, were in possession of the said lands when such proceedings were had pursuant to said erroneous decisions of said land department, to which neither these defendants nor any persons, by, through and under whom they claim, were 171

parties. That the said land department of the United States, on or about December 21st, 1894, awarded the land described in the complaint, to-wit: The southeast quarter of the northwest quarter of the said section 30, township 63, north of range 11, west, which is a part of the land
172 hereinbefore referred to, to one Emil Hartman, upon his application to locate Valentine scrip number E. 117 thereon, made on the 23rd day of February, 1889, in the local land office of said Duluth, Minnesota; and thereafter on or about October 21st, 1895, the officers of the General Land Office, acting in pursuance of said decision, caused to be issued in form a patent of the United States to said Hartman for said land, and that of all the interest that the plaintiff has, and as
173 these defendants verily believe claims to have, arise by virtue of a conveyance of said premises from said Hartman, and have no other interest in said premises whatsoever, save and except such as they claim to have derived from said Hartman.

18. These defendants allege the fact to be that no interest, right or title whatsoever in and to said premises or any part thereof, passed to the said Hartman by virtue of the said pretended
174 patent, nor from him by virtue of any conveyance to the plaintiff.

That after the filing and the location of said scrip by the said Orillie Stram, and the adjustment thereof to the said lands, after the same were surveyed and the plat therof filed, as hereinbefore set forth, neither the land department of the United States, nor any of its officers had any jurisdiction whatsoever to deal with said lands or to dispose of the same or to throw the same

open to public entry by other persons or in any manner to do any act in connection therewith, except it be to cause a patent to be issued therefor to and in the name of said Orillie Stram upon said location, and allege the fact to be that by the terms of said grant and the said Act of Congress, as hereinbefore set forth, and the practice of the department then in vogue, the title to said lands had actually passed to and become the property of said Orillie Stram upon location of said scrip thereon, as hereinbefore set forth, as effectually as though a patent in form had been given therefor in the name of the United States. And that in truth and in fact the said Orillie Stram, and those claiming under her thereupon became the owners to the title of said premises, both legally and equitably, and allege that said patent was erroneously issued to the said Hartman and issued without authority of law, and by a mistake of law and upon an erroneous assumption of fact and mis-interpretation of the law applicable to ascertained facts, and should have been isued, if at all, to the said Orillie Stram, and that if it should in any manner be held that the said Hartman and those claiming under him take any title whatsoever to said premises, at most that the same under the law and the facts hereinbefore set forth and referred to, could be but the bare legal title thereto held in trust for the benefit of the owners of the equitable title to said lands, and that if by reason of the issue of said formal patent it should be held that the bare legal title passed thereby, nevertheless by reason of the matters and things hereinbefore alleged, these defendants are at least owners of the equitable title to the said undivided interest in said lands herein-

before set forth, and are entitled to have conveyed to them the legal title thereto; and that the said plaintiff, its predecessors and grantors, and all of them, have at all times had full knowledge and notice of the rights and interests and ownership and the possession of said lands by them.

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II.

Further answering said complaint and by way of counter-claim, these defendants allege that the defendant Merrill M. Clark is the owner of an undivided one-fourth interest and that the said Richard H. Fagan is the owner of an undivided one-sixth interest in and to the land described in said complaint and together with the owners of the oth-
179 er undivided interests therein, to-wit: Defendants Eaton and Lonstorf, are and at all times since long prior to the commencement of this action have been in the actual possession thereof. That the plaintiff claims some estate or interest in said land or lien thereon, adverse to these defendants, all of which claims are invalid and unfounded, either in law or fact, and void.

As to what claims the other defendants in this action, save and except the defendants Frank
180 W. Eaton, Margaretha Lonstorf, claim in and to said lands, these defendants deny that they have knowledge or information sufficient to form a belief and allege that if the said defendants, except those above named, do make any claim to any right, title or interest in and to said land, or lien thereon, the same is unfounded in law or in fact and void. And further these defendants allege that the defendant Leonidas Merritt was formerly the owner of an undivided one-fourth interest in

and to said land and that all the right, title and interest he ever had in and to said land, is now owned, and for a long time prior to the commencement of this action, has been owned by the defendant Merrill M. Clark.

Wherefore, These defendants pray the court:

1. That the plaintiff take nothing by this 181
action.

2. That it be adjudged, determined and decreed that the plaintiff has no right, title or interest or estate in or to said land, or any part or portion thereof, or lien thereon.

3. That it be adjudged, determined and decreed that the defendant Merrill M. Clark is the owner of an undivided one-fourth interest, and the said defendant Richard F. Fagan is the owner of 182
an undivided one-sixth interest and estate in and to the said lands in fee simple, and that it be adjudged, determined and decreed that they are owners of both the legal and equitable title to the said interest in said lands.

4. That it be adjudged, determined and decreed that the said patent issued to the said Emil Hartman, as aforesaid, under whom the plaintiff in this action claims, and whatever legal or apparent title, if any, passed thereby, be held in 183
trust for the benefit of these defendants, and others similarly situated, and that the said plaintiff, claiming to have succeeded to the rights of said Hartman thereunder, be adjudged, ordered and decreed to convey over said land and all right, claim and apparent title thereto accruing by virtue of said patent to these defendants in the proportion of their respective interests; and that said decree

be so made, that in default of such conveyance the same shall operate to convey and transfer the same to these defendants.

5. And for such other and further relief as to the court may seem just and proper in the premises, these defendants pray.

184 Dated, Duluth, Minn., September 27th, 1897.

WASHBURN, LEWIS & BAILEY,

Attys for Defts. Merritt, Clark and Fagan,
500-505 Lonsdale Bldg., Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

185 Leonidas Merritt, Merrill M. Clark and Richard H. Fagan, being first duly sworn depose and say that they are defendants in the above entitled action; that they have heard read the foregoing answer and know the contents thereof and that the same is true of their own knowledge, except as to the matters therein stated on information and belief, and as to such matters, they believe it to be true.

LEONIDAS MERRITT,
MERRILL M. CLARK,
186 RICHARD H. FAGAN.

Subscribed and sworn to before me this 28th day of September, 1897.

WILLIAM D. BAILEY,
Notary Public,
(Seal.) St. Louis Co., Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants.

The defendant herein, Margaretha Lonstorf, for her separate answer to the complaint of the plaintiff alleges:

That on the 23rd day of November, 1856, under and pursuant to the provisions of the Act of Congress, July 17th, 1854, there was duly issued certain half-breed scrip bearing date on said day to one Orillie Stram, nee Moreau, a Sioux half-breed Indian.

That thereafter the defendant, Frank W. Eaton, was by the said half-breed duly appointed her attorney in fact and was duly authorized for her and in her name and behalf to locate the said scrip on unsurveyed lands of the United States subject to such location.

That on the 16th day of June, 1883, the said Eaton as the attorney of said half-breed duly filed

the said scrip in the local land office at Duluth, Minnesota, and duly located the same on certain lands including the lands and premises described in the complaint which locations were subsequently duly adjusted by the said local land office and were duly approved and posted and embraced the tract above described.

190

That the said power of attorney to said Eaton was executed and delivered by said half-breed and her husband on the 25th day of May, 1883, and duly conferred upon said attorney the power and authority to locate said scrip as aforesaid and to make the improvements which under the Act of 1854 were necessary before location could be made on surveyed lands of the United States and to do any other act necessary to be done in the

191 premises in order to secure a permanent and bona fide location in the same manner as if done by the said scripee and her husband.

That said attorney under said authority duly entered upon the said land and made the said improvements thereon such as were required by said act for the benefit and in behalf of the said scripee.

That on the said 25th day of May, 1883, the said scripee and her husband duly executed and delivered to defendant Leonidas Merritt a certain

192 other power of attorney duly authorizing and empowering him as such attorney to bargain, grant, sell and convey any and all lands acquired by the said scripee under the said scrip.

That the said scripee in all respects complied with the provisions of the statutes of the United States in such case made and provided and became and was entitled to receive from the said United States a patent conveying to her a legal and per-

fect title to the land and premises described in the complaint.

That after the entry of the said land by the said scripee and during the month of July, 1883, the said scripee and her husband duly conveyed to Edward Burr, Joseph A. Powers and Joseph Clement an undivided one-third interest in and to the 193
said land and that during the same month the said Joseph Clement duly conveyed to one Nicholas Lonstorf an undivided one-ninth interest in and to said land and during the month of August, 1883, the said James H. Powers duly conveyed to said Lonstorf an undivided one-ninth interest in and to said land.

That thereafter and on March 31st, 1886, the said scripee and her husband duly executed and delivered a deed of confirmation ratifying and con- 194
firming the conveyances aforesaid and all and singular the acts of Frank W. Eaton and Leonidas Merritt relative to the said land and done and performed by them under the respective powers of attorney made and executed as hereinbefore alleged, which ratification and confirmation was made by the said scripee and her husband with full knowledge of all the facts and for the purpose of perfecting and removing all question from the title of said Nicholas Lonstorf. 195

That thereafter and long before the commencement of this action the said Lonstorf duly made and executed his last will and testament giving and devising under this defendant the lands and premises aforesaid.

That thereafter and long before the commencement of this action the said Lonstorf died leaving this defendant his sole heir and upon his said death the interest of said Lonstorf in said

land duly descended to this defendant who thereupon became and ever since has been the equitable owner of a two-thirds of a two-ninths interest in and to the said land.

That said will was duly admitted to probate and recorded in St. Louis County, State of Minne-
196 sota.

That before the commencement of this action through fraud and mistake a patent of said land was issued conveying the legal title of the same to parties through whom the plaintiff derived its legal title to the said land.

That the plaintiff acquired said title with full knowledge and notice of the said equitable rights of this defendant and now holds the said legal title in trust for the use and benefit of this
197 defendant.

That this defendant is the equitable owner of the said undivided two-ninths in and to said land and is entitled to the judgment and decree of this court directing a transfer to this defendant of said interest or adjudging this defendant to be the owner of the said interest in case such transfer cannot be obtained.

Wherefore this defendant asks that plaintiff
198 take nothing by this action but that this defendant have judgment decreeing that plaintiff convey to this defendant an undivided two-ninths interest in the said land or if such conveyance cannot be obtained that the judgment of this court stand as a conveyance of the said interest to this defendant and that the claim of the plaintiff in and to the said two-ninths interest be forever barred and determined and that this defendant be adjudged the owner of the same, and that this defendant have

such other and further relief in the premises as to the court may seem just and proper.

Dated at Duluth, Minn., April 14th, 1897.

WM. B. PHELPS,

Attorney for Defendant Margaretha Lonstorf.

Office 404-5 Woodbridge Bldg.,

Residence 201 S. 16th Ave. E.

Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Wm. B. Phelps came before me personally, and being duly sworn doth say that he is the attorney for Margaretha Lonstorf, one of the defendants in the above entitled action; that the foregoing answer is true to the best of his knowledge and belief. That the reason why this affidavit is not made by Margaretha Lonstorf is that she is absent from said County of St. Louis, wherein said attorney resides.

WM. B. PHELPS.

Subscribed and sworn to before me on this .... day of April, A D 1897.

Notary Public,

(Notarial Seal.) St. Louis County, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

Germania Iron Company, Plaintiff,

202 vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, et al., Defendants.

Now comes plaintiff above named, and replying to the separate answer of defendant Thomas W. Hyde, denies that the said defendant is now or has been at any time since prior to the com-
203 mencement of this action in possession of the land described in the complaint, or any part thereof.

II.

Replying to the counter claim of the said defendant Hyde, plaintiff admits the allegations contained in paragraphs No. 1, 4, 6, 8, 10, 11, 14 and 23 of said counter claim. Further replying the plaintiff admits that the plaintiff and the several
204 other parties defendant in this action claim some right title and interest in and to the lands in the complaint described, adverse to, the defendant Thomas W. Hyde, and that all said claims except those of the plaintiff are unfounded in law and in fact, but denies that the claim of the plaintiff thereto is unfounded.

Admits the allegations contained in paragraphs No. 5 and 7 of the said counter claims, but alleges that the affidavits filed by the said Thomas

W. Hyde and McDonald as therein mentioned, though in one sense affidavits of contest, were not intended to institute and did not institute contests, were not intended to institute contests under or in pursuance of the provisions of the Act of Congress entitled "An act for the relief of settlers on public lands," approved may 14th, 1880, by virtue of which act only contests can be instituted which will insure to successful contestants a preference right of entry; but that in and by the said affidavits and the proceedings ensuing thereon, the said Hyde and McDonald set up and undertook to enforce their own adverse claims to the land to which the respective affidavits related, under the pre-emption laws of the United States by virtue of settlements and improvements thereon made by them respectively prior to the filing of said affidavits. 205 206

Admits the allegations of the 9th paragraph of said counter claim, but alleges that the said order for hearing therein referred to directed that said hearing be had in order that the "respective parties may have an opportunity to submit such proof as they may have in support of their allegations."

Admits the allegations contained in the 12th paragraph of said counter claim, and alleges that at the hearing therein referred to, evidence was also introduced in support of and against the afore mentioned pre-emption claims of said Hyde and McDonald. 207

Admits the stipulation concerning the testimony taken in the McDonald case as mentioned in paragraph No. 13 of said couter claim, and that the two powers of attorney referred to in the counter claim were filed in the General Land Of-

fice before said hearing, and were in evidence before the local land officers at said hearing. But plaintiff denies that the validity of said scrip location No. 19 D. was the only issue of said contest of the Defendant Thomas W. Hyde, or that the only issue of said contest of said McDonald
208 was the validity of said scrip location No. 19 E., and alleges that there was also involved in said contests and proceedings, and considered and adjudicated therein the invalidity of the pre-emption claims of said Hyde and McDonald, which in said proceedings they were seeking to maintain as aforesaid adversely to the said scrip location, and the plaintiff denies that there was no costs or expense of taking evidence or reducing testimony to writing on the hearing of the said contest of
209 the defendant Thomas W. Hyde, and denies that the defendant Thomas W. Hyde paid all costs or expenses including attorneys and witness fees in procuring the cancellation in the answer, and mentioned on the said scrip location No. 19 D.

Admits the allegations of paragraph 15 of the said counter claim except that the plaintiff alleges that cancellation therein referred to was upon the other and further grounds indicated by the commissioner's decision attached to the answer
210 of said Hyde as exhibit D.

Admits the appeal of Frank W. Eaton to the Secretary of the Interior as alleged in paragraph 16 of said counter claim, and the affirmance by the Secretary of the Interior of the decision of the Assistant Commissioner of the General Land Office as therein alleged, and that the Secretary of the Interior thereupon declared said lands open to entry by the first legal applicant, and denied the Defendant Hyde the preference right to enter the

same, but denies that in any of said matters the Secretary of the Interior acted erroneously or contrary to law, and alleges that by the said decision of the Secretary of the Interior the applications of the said Hyde and McDonald aforesaid, were found and adjudged as matter of fact to have been fraudulent in character because of contracts having been entered into by the said Hyde and McDonald prior to the making of said application by which the title to be acquired by them would inure to the benefit of others than themselves. 211

Admits the motion for review of said Hyde mentioned in paragraph No. 17 of said counter claim, and the hearing thereon, and the decision thereof as therein alleged.

Admits that the said local land officers on the 23rd day of February, 1889, and not on the 9th day of said month as in the said answer alleged, allowed one Emil Hartman to locate Valentine scrip No. 117 E. upon the land in the complaint described, but denies that said action was taken unlawfully or erroneously or without authority. 212

Admits that from the rejection of various applications to enter said lands, appeals were taken as alleged in said 17th paragraph of the counter claim, and that the Commissioner of the Land Office made with respect thereto the order and direction in the answer alleged; that on the 3rd day of April, 1891, within the thirty days alleged the defendant Hyde made application to enter said lands as a homestead, and tended the fees for said application, but denies that the said application was duly made or the said fees duly tended; admits that the said application was rejected by the local land officers but denies that it was rejected 213

erroneously, wrongfully, or without authority of law.

Admits that pursuant to the order of March 13th, 1891, a hearing was had before the local land officers as in the answer alleged, and that the said officers rejected said Hyde's application to enter
214 said land as a homestead, but denies that the said rejection was made erroneously or without warrant or authority of law, or upon any of the assumptions or grounds in the said paragraph alleged, and alleges that the grounds of such rejection were, that it was thereby found and determined as matters of fact that the said Hyde was not in his said contest and proceeding, and had not claimed or purported to be therein, a contestant under or within the meaning of the aforesaid Act
215 of Congress of May 14th, 1880, (but on the contrary had maintained the said proceeding as an adverse claimant of said land), and that even though he had claimed to be proceeding under said act, he could claim no benefits thereunder by reason of his failure to pay or offer to pay the fees required by said act to be paid by the contestant, and that neither the said Hyde nor the said McDonald had paid or offered to pay, (but that on the contrary both of them had refused to
216 pay) any part of the fees for the taking of the testimony on behalf of the said scripee in the said proceedings. All of which facts, so found, were in fact true.

Further replying the plaintiff admits the appeal of Thomas W. Hyde from the said decision of the local land officers to the Hon. Commissioner of the General Land Office, and that the said Commissioner on the 9th day of September, 1893, affirmed the said decision, but denies that the said

affirmance was contrary to law, but alleges that the same was upon the same ground and same findings of fact before described as the basis of the decision of the said local land officers.

Admits that the defendant Hyde duly appealed from the said Hon. Secretary of the Interior. Alleges that the Hon. Secretary of the 217
Interior affirmed the said decision of the Commissioner of the General Land Office, finding and determining as matter of fact the same facts and circumstances hereinbefore referred to as have been found by said local land officers and by the Hon. Commissioner of the General Land Office, and based his decision upon the same grounds.

The plaintiff further admits that the patent from the United States for the said lands after- 218
wards issued to Emil Hartman, but denies that the same was issued unwarrantably or in derrogation, of the rights of the defendant, or erroneously, or without authority of law.

Admits that each of the defendants claim to have an interest in said lands.

Further replying, the plaintiff denies each and every allegation in the said reply contained not hereinbefore specifically admitted or denied, and demands judgment as in it's compfant. 219

BILLSON, CONGDON & DICKINSON,
Attorneys for Plaintiff.

Verified by Wm. W. Billson as secretary of Germania Iron Co., Aug. 19th, 1897.

S. D. ALLEN,
Notary.

STATE OF MINNESOTA, COUNTY OF ST. Louis. District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff,

220 vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Richard H. Fagan, et al., Defendants.

REPLY.

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221 Now comes the above named plaintiff, and for its reply to the separate answer of the defendants Leonidas Merritt, M. M. Clark and Richard H. Fagan.

Admits that on the 17th day of July, A. D. 1854, the Congress of the United States passed the Act entitled, "An Act to authorize the President of the United States, to cause to be surveyed a tract of land in the Territory of Minnesota, belonging to the half-breeds and mixed bloods of the Dakota or Sioux nation of Indians, and for

222 other purposes," referred to in the said answer.

Admits that the United States survey of the lands described in the complaint herein was filed in the local land office at Duluth, Minnesota, on or about the 20th day of July, A. D. 1885.

Admits that shortly after the filing of said survey, one Thomas Hyde made an application to make a pre-emption filing upon lots five (5) and six (6), and the southeast quarter of the northwest

quarter (S. E. 1-4 of N. W. 1-4) of said section, and that said application was denied by the local land officers at Duluth aforesaid, and that on or about the same time one Angus McDonald made a like application on lot two (2), and the north half of the southeast quarter (N. 1-2 of S. E. 1-4), and the southwest quarter of the northeast quarter (S. W. 1-4 of N. E. 1-4), of said section, and that said application was also denied by the said local land officers, on the ground that the said lands had already been appropriated by the location of said scrip thereon, and also on the ground that the applications of said Hyde and McDonald were not made in good faith, but were made in fraud and in violation of the pre-emption laws of the United States, and were affected by fraudulent and unlawful intent, rendering the same invalid, and that it was duly and properly determined by the local land officers, and sustained by departmental decision that neither the said Hyde nor the said McDonald ever had or obtained any right whatsoever to the said lands by virtue of said pre-emption filings or by virtue of any subsequent proceedings on the part of said Hyde or McDonald, or either of them to obtain said lands, and that said pre-emption filings were void and invalid, and contrary to the laws of the United States, and that said Hyde and McDonald thereby obtained no preference right of entry, or any rights of any character in or to the said lands, or any part thereof.

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The plaintiff further admits that notwithstanding the said decision the said Hyde and McDonald made in the Land Department of the United States in or about the month of November, 1885, an attack upon the pretended location of

scrip or certificates which had been made in the name of Orillie Stram, upon the lands described in the complaint, charging that the said Orillie Stram had never made any improvements upon said lands, either in person or by agents or attorney, and that the
226 said lands were at the time of said attempted location unsurveyed lands, and could be located only after such improvements had been made, and supported the same by an affidavit, in which the said Orillie Stram denied giving said power to said Eaton, or any authority to locate the scrip, or erect buildings or make improvements on the said lands, or on any lands for her use or benefit, and denies that the said affidavit had been obtained from said Orillie Stram by misrepresentation, and
227 admits that such charges on the part of the said Hyde and McDonald culminated in a hearing thereon in the local land office at Duluth, Minnesota, on the 6th day of April, A. D. 1886, which resulted in a decision of the said local land officers sustaining the said scrip locations, but as to whether in the said decision the said local land officers made the particular holdings, or any of them, alleged in the said answer to have been made by them, the plaintiff denies that it has any
228 knowledge or information sufficient to form a belief.

The plaintiff further admits that from said decision, the contestants Hyde and McDonald appealed to the General Land Office, but whether upon the particular grounds, or any of them, in said answer alleged, the plaintiff denies that it has any knowledge, or information sufficient to form a belief.

Admits that pending said proceedings on appeal other parties made application to contest the said scrip locations, and also to contest the preemption claims of said Hyde and McDonald, which under the instructions of the Commissioner of the General Land Office in August, 1887, were held subject to the final disposition of said appeal.

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Admits that upon said appeal the Commissioner of the General Land Office made his decision and found that the said attempted scrip locations were not valid, and should be cancelled as speculative, and made with intent to evade the law, rather than comply with the legal requirements, but as to whether by the said decision there were made the further particular findings, or any of them, alleged in the said answer, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

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Further answering the plaintiff admits that an appeal from the said decision was taken from the General Land Office to the Secretary of the Interior, on or about the 4th day of August, 1888, by said Orillie Stram and Frank W. Eaton, but as to whether in or upon said appeal there were assigned the particular specifications of error, or any of them, in the said answer alleged, the plaintiff denies that it has any knowldge or information sufficient to form a belief.

231

The plaintiff further admits that thereafter, and on or about the 18th day of February, 1889, the Honorable William F. Vilas, then Secretary of the Interior of the United States, decided said cause on appeal, and held that the said scrip locations were invalid, and that said decision was afterwards, on the 28th day of January, 1891, confirmed by the Honorable John W. Noble, then

Secretary of the Interior, and that it was also determined in the decisions of both secretaries, that neither Hyde nor McDonald, nor any person or persons whomsoever had any right, title or interest in or to said land, or any part thereof, or any claim thereon, and that at no time either intervening between said location of said scrip upon
232 unsurveyed land, or at any other time, had any valid rights attached to said lands, and that the said lands were thus left open to disposal under the public land laws of the United States applicable thereto.

Further replying the plaintiff alleges, that the said decisions of said secretaries, were duly rendered upon testimony taken on behalf of all the parties then claiming interests in said land, or who
233 had made or attempted to make any of the said locations, entries, filings, or contests, duly taken upon issues duly framed and made by and between them in the said Land Department (all of said parties having been duly cited to appear in said hearings and proceedings, and having duly appeared and participated therein) upon the question among others, whether any improvements had ever been made, upon any of the lands described in the complaint herein, or upon which
234 the said pretended scrip locations had been attempted to be made, by or on behalf of the said Orillie Stram, in whose name the said pretended scrip location had been attempted, and it was found and determined as matter of fact, in and by the decisions of both of the said Secretaries of the Interior, that no such improvements had ever been made, by the said Orillie Stram, or for her use or benefit, or by any one acting on her behalf, and that the said Orillie Stram, never had any in-

terest in the said land, or in the attempted location thereof with the said scrip, and had parted with all her interest in the said scrip long prior to the time when it was claimed that the improvements upon the said land had been made, under the direction of Frank W. Eaton in the said answer mentioned, all of which findings are in 235
fact true, and all of which findings of fact the plaintiff alleges are conclusive against and an estoppel upon the defendants Leonidas Merritt, Richard H. Fagan and Merrill M. Clark, and the other parties to the said hearings, and persons claiming under them.

The plaintiff further admits that after the said decisions, the Land Department of the United States assumed to allow other parties to come in and apply for the said lands, and that the said 236
department on or about December 21st, 1894, awarded the land described in the complaint (which is a part of the land attempted to be covered by the pretended scrip locations in the said answer described) to one Emil Hartmann, upon his application to locate Valentine Scrip No. E. 117 thereon, made on the 23rd day of January, 1889, in the local land office at Duluth, Minnesota, aforesaid, and that thereafter and on or about October 21st, 1895, the officers of the General 237
Land Office acting in pursuance of said decision, caused to be issued in form a patent of the United States to said Hartmann for said land, and that all the interest which the plaintiff has, arises by virtue of a conveyance of said premises from said Hartmann, and the plaintiff alleges that the said patent was duly issued to the said Emil Hartmann upon and in pursuance of an entry of said land by him, duly made at the said local land

office in Duluth, Minnesota, on the 23rd day of February, 1889, by the location upon the same of Valentine scrip number E. 117, the said Emil Hartmann being then and there the owner and holder of the said Valentine scrip, and then and there tendering and paying at the same time the
238 fees in that behalf required by law.

That at the time of said location the said land was unappropriated public land of the United States, subject to entry or location through said scrip, and that said location of said scrip thereon was duly accepted and allowed by the said local land officers, and the certificates of location of said lands duly issued thereon, by the said local land officers.

Further replying the plaintiff denies each
239 and every allegation and part thereof in the said separate answer contained, not hereinbefore specifically admitted or denied, except that as to the allegations admitted or denied, except that as to the allegations contained in paragraphs numbered six (6), seven (7), eight (8) and nine (9) of said answer, the plaintiff denies that it has any knowledge or information sufficient to form a belief.

BILLSON, CONGDON &
DICKINSON,
240 Attorneys for Plaintiff,
511 Lonsdale Bldg.,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

The Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, et al., Defendants.

241

Now comes plaintiff and for its reply to the separate answer of Margaretha Lonstorf, admits the issuance of the half-breed scrip to Orillie Stram, nee Moreau, as in the answer alleged, and 242
alleges that the said scrip was scrip 19 D. hereinafter mentioned.

Admits the death of Nicholas Lonstorf as in the answer alleged and the execution and probate of his will, as therein alleged, and the succession of the defendant Margaretha Lonstorf to the claim of said deceased to an interest in the land described in the complaint, and the issuance of the patent of said land to the plaintiff's grantor, but plaintiff denies that the said patent was issued 243
through mistake or fraud, and further replying denies each and every allegation and part thereof, in said separate answer contained not hereinbefore specifically admitted, except the allegation as to the execution and delivery of a deed of confirmation by the said scripee and her husband, and her knowledge of the material facts, as to which the plaintiff denies that it has any knowledge or information sufficient to form a belief.

Further replying, plaintiff alleges that on the 9th day of October, 1894, the defendant Thomas W. Hyde filed in the local land office an affidavit of contest, duly corroborated, against the said scrip location made with the said Sioux half-breed scrip No. 19 D., and thereby contested the same
244 on the grounds that the said scripee Orillie Stram, nee Moreau, never made any improvements whatever on said lands, either in person or by agent, or attorney, and that said lands at the date of the attempted location of said scrip No. 19 D. were unsurveyed, and belonged to that class of lands which could be located with said scrip only after the scripee had made improvements on the same, and in support of the said charge said Hyde also submitted an affidavit of the said scripee in which
245 she denied ever having given, either directly or indirectly said Frank W. Eaton a power of attorney, or any authority of any kind to locate any land with said scrip, or to erect buildings or make improvements upon the lands located with the said scrip No. 19 D.

That in refutation of said charges said Frank W. Eaton filed in said land office certain affidavits in support of the legality of said scrip location No. 19 D. and also certified copies of two
246 powers of attorney, purporting to be executed by the said scripee and her husband, and to authorize him to select and locate and to make the necessary improvements to enable him to locate for her said scrip No. 19 D.

That the said application of the defendant Thomas W. Hyde to contest the said scrip location of Sioux half-breed scrip No. 19 D. duly came on for hearing before the Assistant Commissioner of the General Land Office, and he, on the 14th day

of November, 1885, ordered a hearing to determine the legality of the said scrip location.

That said order was duly transmitted to the said local land office, and on the 17th day of November, 1885, the Register and Receiver of the said land office duly fixed as a day for such hearing the 6th day of April, 1886, and duly issued notice 247
thereof, which was duly served upon all parties in interest.

That pursuant to the said notice and order of hearing, the said matter came on for hearing before the Register and Receiver of the said local land office, and all interested parties appeared and submitted evidence.

That upon the evidence so submitted the said local land officers adjudged and determined that the said scrip location by Frank W. Eaton osten- 248
sibly as the agent of Orillie Stram was valid.

That from said decision said Thomas W. Hyde in due time duly appealed to the Hon. Commissioner of the General Land Office, and assigned as errors on said appeal the following, to-wit: 1st. Because the Register and Receiver were never authorized or directed to decide said cause. 2nd. Because the so-called decision was contrary to the evidence and the facts. 3rd. Because the so-called decision was contrary to law. 249
4th. Because the so-called decision treats the case as though the contest was one between the scripee and her attorney, whereas, it grew out of a contest by third parties, who claim and have shown that the scrip entry was fraudulent on the part of both the scripee and her grantees. 5th. The local land officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether

the land contained improvements made by, or under the personal supervision or direction of the scripee, and that they were not for her personal use and benefit.

That said appeal duly came on for hearing before the Hon. Assistant Commissioner of the
250 General Land Office, and he, on the 4th day of August, 1888, after due consideration of the evidence, and after arguments on behalf of said Orillie Stram and all persons claiming under her, held the said scrip location unlawful and void, and cancelled the same.

That from the said decision appeal to the Hon. Secretary of the Interior was duly taken by the said Frank W. Eaton and Orillie Stram, and by all persons claiming through or under
251 them or either of them, and after hearing all parties in interest the said decision was by the Hon. Secretary of the Interior affirmed on the 18th day of February, A. D. 1889.

That a motion for the review of the said decision of the Hon. Secretary of the Interior having afterwards made, the said decision after further full argument on behalf of all persons interested, reaffirmed on or about the 28th day of January, A. D. 1891.

252 That to all of said controversies and hearings said Nicholas Lonstorf was a party, having been duly cited thereto by the notices in that behalf prescribed by law by the rules and regulations of the General Land Office, and that at all said hearings said Lonstorf and those under whom he claimed said land were represented by counsel, and that the said decision of the Hon. Commissioner of the General Land Office and the said decisions of affirmance and reaffirmance by the

Hon. Secretary of the Interior were upon the ground that it was found by said officers respectively as matter of fact upon due consideration of all the evidence taken at said hearing before said local land officers that the said half-breed Orillie Stram had sold her said scrip prior to its aforesaid pretended location, but because of the prohibitions in the Act of Congress against transferences, the transaction was given the form of a delivery of scrip accompanied by two irrevocable letters of attorney, one to locate the scrip, the other to sell the land; that it was sought by this circumvention to accomplish that which was forbidden by law; that improvements were not made for the half-breed in any sense whatever; and that the scripee never saw the land or improvements or had anything whatever to do with either; all of which findings plaintiff alleges were true and conformable to the facts as they actually existed, and as they were proven by testimony at the said hearing, wherefore the plaintiff demands judgment as in its complaint. 253 254

BILLSON, CONGDON & DICKINSON,
Attorneys for Plaintiff.

255

Verified by Wm. W. Billson, Secretary Germania Iron Co., Aug. 20th, 1897.

S. D. ALLEN,
Notary Public,
St. Louis County.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

Germania Iron Company, Plaintiff,

256 vs.

Frank W. Eaton, et al., Defendants.

Please take notice, that upon the written consent of Messrs. Billson, Congdon & Dickinson, duly filed in the office of the Clerk of the above entitled Court, I the subscriber, Walter Ayers, have been substituted as attorney for the plaintiff

257 in the above entitled action.

Dated September 28th, 1898.

WALTER AYERS.

To

MESSRS. DRAPER, DAVIS & HOLLISTER,
WHITE & McKEON,
WASHBURN, LEWIS & BAILEY,
MR. JOHN JENSWOLD, JR.,
MR. W. B. PHELPS,

258 Attorneys for the respective parties appearing herein.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

Germania Iron Company, Plaintiff, 259

vs.

Frank W. Eaton, et al., Defendants.

MOTION FOR SUBSTITUTION OF MIDWAY COMPANY AS PARTY PLAINTIFF.

Comes now the defendant Hyde and moves 260
the court, upon the records and files herein and upon the following affidavit, all of which are made a part hereof, for an ORDER, that the Midway Company be substituted as party plaintiff herein, in lieu of the Germania Iron Company, for the several reasons and grounds as set forth in said affidavit and generally for the reason that since the commencement of this action, the plaintiff herein has sold and conveyed all the lands in controversy to the said Midway Company, which said 261
Midway Company is now the only and real party in interest herein, and for the further reason that unless said company is made a party plaintiff herein it will not be bound by any judgment or order which may be made herein, adverse to it.

JNO. JENSWOLD, JR.,
Attorney for Defendant Hyde,
No. 307 Palladio Bldg.,
Duluth, Minn.

AFFIDAVIT.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

John Jenswold, Jr., being duly sworn upon oath says that he is the attorney for the defendant Hyde in the above entitled action; that said action
262 is one brought to determine the title to the south east quarter of the north west quarter of section thirty, in township sixty-three north of range eleven, west of the 4th P. M., situated in Lake County, Minnesota, as shown by the complaint herein filed that subsequent to the commencement of said action, service of the summons herein was duly made upon the defendant Hyde and thereupon the said defendant duly appeared and served and filed herein his answer, wherein he set
263 up his title to said property and asks the judgment and decree of this court against said plaintiff and his co-defendants, adjudging him, the said Hyde, to be the sole owner of said property that no part of this action has ever been tried, either upon demurrer, motion or the facts and no order of this court has ever been made or applied for herein, but said action, in its entirety, is still pending and undetermined that subsequent to the commencement of this action, and the service and
264 filing of the said answer and counter-claim of the defendant Hyde, the plaintiff did on the 3rd day of Jan., A. D. 1898, for a valuable consideration to it paid, duly make, execute, acknowledge and deliver to the Midway Company, its warranty deed for the said entire tract of land, which warranty deed was duly filed for record in the office of the Register of Deeds of Lake County, Minnesota, and duly recorded therein on Jan. 6, 1898, in Book "J" of Deeds on page 620, since which time the

said Germania Iron Company has neither had nor made any claim to any right, title, interest, lien or demand in or to said land; that said Midway Company is a corporation duly organized and created under and by virtue of the laws of the State of Minnesota and it has now succeeded to the entire interest and claim of the said Germania Iron Company, in and to said land and is, as between it and the said Germania Iron Company, the sole and only real party in interest that none of the defendants herein filed any notice of lis pendens, as provided by statute, until on the 20th day of Aug., 1898, at which time the said Hyde duly filed and caused his notice of lis pendens to be recorded in the office of the Register of Deeds of Lake County, Minnesota; that for the purpose of this motion, this defendant refers to the complaint herein and his said answer and counterclaim and the records and files in the office of the Register of Deeds of Lake County, Minn., herein specifically referred to and makes the same a part hereof; that in order to have a full determination of this action, and that the rights of all persons who claim any interest in the lands herein described may be finally and fully determined, it is necessary that the said Midway Company be made a party plaintiff herein, as otherwise it would not be bound by any judgment or order which might be made herein adverse to it; that this affidavit is made in support of the above motion, for an order substituting the said Midway Company as party plaintiff herein; that the said defendant Hyde is not within the County of St. Louis, wherein resides this affiant, his attorney; that further affiant sayeth not.

265 266 267

JNO. JENSWOLD, JR.,

Subscribed and sworn to before me this 23rd day of Sep., A. D. 1898.

J. B. RICHARDS,
Notary Public,
St. Louis Co., Minn.

(Notarial Seal.)

268

NOTICE.

To the Germania Iron Company, plaintiff in the above entitled action, and

To Messrs. Billson, Congdon & Dickinson, its attorneys and

To The Midway Company:

Please take notice that the foregoing motion
269 will be brought on for hearing and argument before one of the judges of the above entitled court, at the Court House in the City of Duluth, Minn., on the 1st day of Oct., A. D. 1898, at 9:30 o'clock A. M., or as soon thereafter as counsel can be heard.

Dated this Sep. 23, A. D. 1898.

JNO. JENSWOLD, JR.,
Attorney for Defendant Hyde,
No. 307 Palladio Bldg.,
Duluth, Minn.

270

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

Germania Iron Company, Plaintiff, 271

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, Daniel C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants. 272

ORDER.

The application of the defendant Thomas W. Hyde herein, to have the Midway Company made a party to this action and substituted as party plaintiff herein, in lieu of Germania Iron Company, having come on for hearing before the undersigned, one of the judges of said court, at the 273
Court House in the City of Duluth, Minnesota, on the 1st day of October, 1898, and the court having found that said Midway Company and said Germania Iron Company were both duly served with notice of the said application, and said Hyde having appeared by his attorney John Jenswold, Jr., and the plaintiff, Germania Iron Company and said Midway Company appearing by their attorneys Messrs. Walter Ayers and P. H. Seymour,

said application was, by agreement between said parties, duly made in open court, continued until Oct. 15, 1898, to the same hour and place.

And now, to-wit: On this 15th day of Oct., 1898, the said application coming on for hearing and argument, John Jenswold, Jr., appearing as
274 attorney for the defendant Thomas W. Hyde, in support thereof, and the plaintiff, Germania Iron Company and Midway Company appearing by their attorney Messrs. Walter Ayers and P. H. Seymour, and Messrs. Washburn, Lewis & Bailey appearing as attorneys for certain other defendants herein, and consenting thereto, and the court having found that the said application for substitution was duly served on the several attorneys appearing for all the defendants herein,
275 and the court having examined the records and files herein, and deeming the reasons for the said application sufficient, it is therefore

Ordered, that Midway Company be and the same is hereby made a party to said action and substituted as plaintiff herein, in lieu of Germania Iron Company, and that said action be continued in the name of Midway Company as the party plaintiff herein, with the same force and effect as the same could have been done in the name of
276 Germania Iron Company as plaintiff, but for the transfer of its claim of ownership of the real estate in controversy herein to said Midway Company.

Dated this Oct. 15, A. D. 1898.

By the Court,

WM. A. CANT,
District Judge.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

The Midway Company (Substituted for the Germania Iron Company,) Plaintiff, 277

vs.

Frank W. Eaton, Leonidas Merritt, et al., Defendants.

STIPULATION.

It is stipulated by and between the parties to the above entitled action, that the place of trial 278 thereof shall be and the same hereby is changed to St. Louis County, Minnesota.

That the Court may make an order changing the place of trial of the above entitled action as aforesaid.

That said case shall not come on for trial until a the May, 1899 General Term, St. Louis Co., Minn.

Dated February 1st, 1899. 279

WALTER AYERS and
P. H. SEYMOUR,
Attorneys for Plaintiff.

WASHBURN, LEWIS and
BAILEY,
Attorneys for Defendants Leonidas Merritt, Merrill M. Clark and Richard H. Fagan.

WM. B. PHELPS,
Attorney for Margaretha Lonstorf.

WHITE & McKEON,
Attorneys for Samuel C. Brown and Fred W. Huntress.

JOHN JENSWOLD, JR.,
Attorney for Thomas Hyde.

DRAPER, DAVIS and HOLLISTER,
280 Attorneys for C. P. Wheeler and Bishop Iron Company.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

281

The Midway Company, (Substituted for the Germania Iron Company), Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, et al, Defendants.

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282 Upon reading and filing the annexed stipulation, and on motion of Walter Ayers, one of the attorneys for the plaintiff,

IT IS ORDERED,

That the place of trial of the above entitled action be and the same is hereby changed to St. Louis County, Minnesota, and the clerk of the above entitled court is hereby directed to transmit the files and papers in said cause to the clerk

of the District Court of the Eleventh Judicial District in and for St. Louis County.

By the Court,

WM. A. CANT,

Judge.

Dated April 18th, 1899.

283

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

The Midway Company (substituted as plaintiff in place and stead of Germania Iron Company,

Plaintiff,

284

vs.

Frank W. Eaton Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, David C. Sullivan, Thomas Chellew, and the Bishop Iron Company,

Defendants.

285

This cause being on the calendar of the General May, 1899, Term of this Court, came on for trial in due course before the undersigned judge of said court, without a jury, at the court house in the city of Duluth, in the County of St. Louis and State of Minnesota, on the 12th day of June, 1899, Walter Ayers and P. H. Seymour, appearing as attorneys for the plaintiff, Washburn, Lewis

and Bailey appearing as attorneys for the defendants Leonidas Merritt, Richard H. Fagan, and Merrill M. Clark and Towne and Harris and Frank Cutting appearing as attorneys for the defendant Margaretha Lonstorf, John Jenswold, Jr., and John Brennan appeared for Defendant Hyde, and the court having heard and considered
286 the evidence adduced upon said trial and the arguments of the respective attorneys therein, hereby makes and files its findings of fact and conclusions of law in said cause:

FINDINGS OF FACT.

1. That one Orillie Moreau afterwards married to one Stram and thereafter known as Orillie
287 Stram was one of the parties entitled to the benefits of the Act of Congress of the United States of July 17th, 1854, entitled "An Act to authorize the President of the United States to cause to be surveyed a tract of land in the Territory of Minnesota belonging to the half-breeds and mixed bloods of the Dacotah or Sioux nation of Indians and for other purposes" and of the treaty negotiated with said half-breeds and mixed bloods in pursuance of said act by the President of the United States and in pursuance thereof there was issued
288 to said Orillie Moreau certificates commonly known as Sioux half-breed scrip numbered 19 E. and 19 D. entitling said Orillie Moreau afterwards Stram to select, take and have of the public lands of the United States of the classes mentioned in said act 320 acres of such land each of certificates or scrip being for 160 acres.

2. That thereafter and on the 16th day of June, A. D. 1883, the said Orillie Moreau then

Orillie Stram, never having theretofore made use of the said certificates of scrip and the same never having been in any manner extinguished or satisfied, through the defendant Frank W. Eaton, who had theretofore been by her duly empowered as her attorney in fact for that purpose, presented said scrip at the local land office in Du- 289
luth, Minnesota, and then and there made application to locate the same on certain then unsurveyed lands of the United States in said land district in which said land office was located and did then and there enter and file upon by virtue of said scrip the lands for which said application was made as aforesaid and filing therewith a diagram or plat of said land embracing a sufficient description thereof to properly designate the same, which lands were in said application described by 290
metes and bounds as follows: Starting at the quarter post on the east line of section 25, township 63, north of range 12 west and thence running east 240 rods for a place of beginning, thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, the same being located under said scrip number 19 E.; also commencing at the quarter 291
post on the east line of section 25, in township 63, north of range 12 west, running thence north on said section line 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to the place of beginning the same being located under scrip number 19 D., each of said locations embracing 160 acres of land, the same not being lands reserved

by the Government of the United States for any purpose whatsoever. That prior to the location of said scrip upon said land as above found improvements had been made thereon consisting of a house 14 by 16 feet by and under the authority of the said Frank W. Eaton.

292 3. That thereafter and on the 20th day of July, 1885, said lands having been duly surveyed and platted, the plat and survey of said township and of said lands made by and under the authority of the Government of the United States was duly filed in the local land office at the City of Duluth, Minnesota, and thereupon and on the 21st day of July, 1885, upon application of the said Orillie Stram acting and through her said attorney in fact said certificates of Sioux half-
293 breed scrip number 19 D. was adjusted to and upon lots 3, 5 and 6 and the southeast quarter of the northwest quarter of section 30 in township 63 north of range 11 west and said certificate of Sioux half-breed scrip number 19 E. was adjusted upon lots 1 and 2 and the southwest quarter of the northeast quarter and the northwest quarter of he southeast quarter of section 30, township 63 north of range 11 west, being the same lands hereinbefore described by metes and bounds and
294 then and there and on that day said certificates of scrip were duly located upon the said surveyed lands and the said lands as surveyed lands were taken and appropriated under and by virtue of said scrip and the locations of said scrip were at said time allowed by the officers of the local land office at Duluth, Minnesota, there not being at said time nor at the time when said scrip was located on said unsurveyed lands nor at any other time, any valid adverse claims to said lands and

on the said 21st day of July, 1885, receiver's final receipts and certificates of entry and filing were duly and regularly issued to said Orillie Stram which were duly and regularly recorded in the office of the Register of Deeds for the County of Lake and State of Minnesota, and also in the office of the Register of Deeds for the County of St. Louis and State of Minnesota, within a few days therafter. 295

4. That through sundry mesne conveyances duly of record the defendants Merrill M. Clark, Richard H. Fagan, Frank W. Eaton and Margaretha Lonstorf have succeeded to the rights and interests of the said Orillie Stram in and to the said lands in the following proportions respectively: Frank W. Eaton, the undivided 13-36, Merrill M. Clark, the undivided 9-36, Margaretha Lonstorf, the undivided 8-36 and Richard H. Fagan the undivided 6-36 and the said defendants are still owners of the said lands in said proportions. 296

5. That on the 20th day of July, 1885, one Thomas Hyde made an application to make a preemption filing upon lots 5 and 6 and the southeast quarter of the northwest quarter of said section heretofore referred to which application was denied by the local land officers at Duluth, Minnesota, and upon the same day one Angus McDonald made a like application for lot 2 and the north half of the southeast quarter and the southwest quarter of the northeast quarter of said section heretofore referred to which application was also denied by the local land officers both on the ground that said lands had already been appropriated by the location of the said scrip thereon and also that the applications of the said Hyde 297

and the said McDonald were not made in good faith but were made in fraud and in violation of the pre-emption laws and were effected by a fraudulent and unlawful intent and corrupt contract made prior to their attempted entry for the transfer of an interest in said lands to other parties rendering the same invalid and that it was duly de-
298 termined by the local land officers and sustained by the decision of the Commissioner of the General Land Office and also by the Secretary of the Interior that neither the said Hyde nor the said McDonald ever had or obtained any rights whatsoever in or to the said lands by virtue of said application for pre-emption filings or by virtue of any subsequent proceedings on their part or either of them but that notwithstanding the same the
299 said Hyde and the said McDonald made an attack upon the said decisions of the land department some time in November, 1885, and upon the location of the said certificates of scrip and on the entry of the said lands thereunder; that a hearing before the local land officers at Duluth, Minnesota, was ordered and had on the 6th day of April, 1886, resulting in a decision of the said local land officers sustaining the said scrip locations from which decision an appeal was taken
300 to the Commissioner of the General Land Office by the said Hyde and McDonald and a hearing was had thereon before said commissioner upon which said commissioner held adversely to the said scrip locations, whereupon an appeal being taken to the Secretary of the Interior of the United States and a hearing had thereon the said Secretary of the Interior on the 18th day of February, 1889, by his decision, a copy of which is hereto annexed marked Ex. "A" and made a part here-

of, held and determined that neither said Hyde nor said McDonald had any right or interest in or valid claim to said lands or any thereof whatsoever, but notwithstanding the same in said decision the said Secretary of the Interior held and decided that said Orillie Stram and those claiming under her were not entitled to said land under and by virtue of said scrip locations and held that said scrip locations upon said land were illegal and invalid for the following reasons, to-wit: First, that the said improvements made upon said land while it was yet unsurveyed in aid of the location of said scrip upon said lands were not made under the personal supervision and direction of the said Orillie Stram and that she had not had personal contact with the land; second, that by reason of the fact that the said Orillie Stram had executed and delivered to the said Frank W. Eaton a power of attorney to locate the said scrip and at the same time executed and delivered a power of attorney to Leonidas Merritt to sell the lands that should be located under and by virtue of said pieces of scrip after the same were located, that the said transactions operated in law as an assignment of the scrip and were in violation of that portion of the Act of July 17th, 1854, prohibiting assignments of the scrip issued thereunder and hence that said entry of the said lands was not for the benefit of said Orillie Stram; third, that the location of said lands and the adjustment of said scrip thereto after the said lands were surveyed and the plat of said township filed, notwithstanding no intervening rights had accrued to any other parties, could not be effectual in view of the previous attempt to locate said scrip upon said lands while

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the same were unsurveyed and in view of the decision of said secretary relative to the question of improvements; fourth, the secretary held in said decision that the scripee had no power or right to alienate the land she was entitled to receive under and by virtue of said scrip before the location of the scrip or to make and contract for the
304 sale of the same after the same should be located or grant any power to another to sell the same for her after the same should be located, but held that the scripee had the right to sell the land immediately after the location of the scrip and the Secretary of the Interior therefore and thereupon held that said lands should be thrown open for public entry and held the same to still be a part of the public domain and subject to entry.

305 6. That prior to the said hearing had before the local land officers at the City of Duluth, the said Orillie Stram and Roman Stram, her husband, executed and delivered to the said Frank W. Eaton, a certain instrument in writing, bearing date the 31st day of March, 1886, which was thereafter, to-wit: On the 3rd day of April, 1886, duly recorded in the office of the Register of Deeds of said St. Louis County, and on the 24th day of April, duly recorded in the office of the Register
306 of Deeds of Lake County, Minnesota, a true copy of which said instrument is annexed to these findings marked Exhibit "B" and made a part hereof.

7. That the said Midway Company and the said Germania Iron Company are each of them duly incorporated.

That thereafter and in pursuance of the said decision of the said Secretary of the Interior hereinbefore referred to the said lands were attempted to be thrown open for public entry and

that the United States of America acting through its officers on the 21st day of October, 1895, issued and delivered to one Emil Hartmann, its patent in the usual form purporting to convey to the said Emil Hartmann the premises described in the complaint herein, the southeast quarter of the northwest quarter of section 30, township 63 north of range 11 west of the fourth principal meridian. 307

8. That the said Emil Hartmann together with Betsy Hartmann his wife thereafter conveyed said premises in form to said Germania Iron Company and said Iron Company conveyed the same in form to said plaintiff herein who now holds whatever title thereto enured to the said Hartmann under said patent; that neither the said Orillie Stram or her husband or said Clark, 308 Eaton, Fagan or Lonstorf were in any manner parties to the proceedings subsequent to the said decision of the Secretary of the Interior whereby said patent was issued and that plaintiff and said Germania Iron Company and said Hartmann at all times had full knowledge of all the rights and claims of the said defendants Clark, Eaton, Fagan and Lonstorf and each of them in and to said lands. That this action is pending in Lake County in said State but was transferred to said St. Louis County for trial by the stipulation of the 309 parties.

9. That the Midway Company and the Germania Iron Company are each of them duly incorporated.

10. That the findings or determination of fact by the said William F. Vilas, Secretary of the Interior as aforesaid, were fully sustained by the evidence in said cause presented to him by

the record in said appeal, except it is found as a fact by this court that the improvements caused to be erected by the said Frank W. Eaton, upon the said premises, consisted of a house about 14 by 16 feet in size, and it is further found as a fact, that from the evidence before the Secretary
310 of the Interior in said cause presented to him by the record upon said appeal, it did not appear that the scrip referred to in the decision of said Secretary had passed through many hands or through any hands before coming into the hands of the said Frank W. Eaton, nor did it appear that the powers of attorney to locate said scrip and to convey the land located therewith, had been executed by the said Orillie Stram years before the location thereof by the said Frank W. Eaton,
311 but that on the contrary it appeared from the evidence before said secretary that said powers of attorney were executed by the said Orillie Stram about one week before the location of the said scrip by the said Frank W. Eaton, and that the said powers did not contain the names of the grantees. It is further found as a fact that it did not appear from the evidence before the said secretary that the said scripee never saw the said lands; it did not appear from the evidence before the said
312 secretary that she had sold the said scrip long prior to the location thereof; it did not appear from the evidence before the said secretary that for a long time she directly and positively repudiated Eaton and Merritt as her attorneys in fact, denying that they acted for her in any capacity whatsoever.

CONCLUSIONS OF LAW.

1. That the said decision of the said Secretary of the Interior by which said Secretary held said scrip locations to be invalid and attempted to throw said lands open for public entry was erroneous and contrary to law and founded upon a misinterpretation and misconception of the law 313
applicable to the case, in this, among other things, (a) in holding that the locations of the said pieces of scrip upon the said lands while they were yet unsurveyed was invalid because of the fact that the improvements were not made upon said land under the personal supervision and direction of the said Orillie Stram and because she had not come in personal contact with the said land; (b) in holding that the said locations of scrip upon the said lands were illegal and invalid because of 314
the fact of the execution of a power of attorney to Frank W. Eaton to locate the said scrip, and by reason of the fact of the execution of a power of attorney by the said Orillie Stram to the said Leonidas Merritt to transfer and convey the said lands that should be located under the said pieces of scrip; (c) by holding that the said scripee had no right to alienate the land itself before the location of the said scrip thereon or to make any contract in regard to the same or any power to an- 315
other to grant and convey the same when the same should be acquired; (d) in holding that the execution of the said powers of attorney operated in law as an assignment of the said scrip and in holding that the said transactions were in violation of that portion of the said Act of July 17th, 1854 prohibiting assignment of the said scrip; (e) in holding that the appropriation of said lands under and by virtue of said scrip and the adjust-

ment of said scrip thereto and the location of the same thereon after said lands had been surveyed and the plat of the said township filed were invalid as an independent location upon surveyed lands because of the previous location, held by said secretary to be ineffectual, of said scrip upon
316 said lands as unsurveyed lands without regard to the question of improvements, no intervening rights of any other parties having accrued.

2. That under and by virtue of the said scrip locations as hereinbefore found the said scripee Orillie Stram and those claiming under her became the owners of said lands and entitled to have a patent therefor issued by the United States to and in the name of the said Orillie Stram and that the said Hartmann and the plaintiff claiming un-
317 der him, at most acquired nothing more than the bare legal title to the said lands by virtue of the said patent issued to the said Hartmann as hereinbefore found; and that further than that the said plaintiff has no right, title or interest in or to the said lands or any part thereof, nor have any of the defendants any right, title or interest therein or in any part thereof except the defendants Clark, Eaton, Fagan and Lonstorf.

That the decision of the said Secretary of the
318 Interior in so far as it was therein held that neither said Hyde nor McDonald had any right in or to the said lands and that their attempted pre-emption claims were invalid is correct and in accordance with the law and the facts.

3. That the defendant Frank W. Eaton is the owner of an undivided 13-36 of the said land described in the complaint and the defendants Merrill M. Clark is the owner of an undivided 9-36 thereof, and the defendant Margaretha Lonstorf

is the owner of an undivided 8-36 thereof and the defendant Richard H. Fagan is the owner of an undivided 6-36 thereof and are entitled to the judgment and decree of this court adjudging them to be such owners thereof in the said proportions free and clear of any claim of any right, title or interest therein on the part of said plaintiff and of any other of said defendants and entitled to the judgment and decree of this court, adjudging that whatever legal title the said plaintiff holds in and to the said premises that it holds the same in trust for the said defendants in the proportions above specified, and that the said defelndants are entitled to the judgment and decree of this court adjudging and directing that the said plaintiff shall convey said premises to the said defendants in the proportions above specified and that upon failure to so convey the same, a certified copy of such judgment to be entered hereon may be recorded in the office of the Register of Deeds, of the proper county and when so recorded that such judgment shall operate to transfer and convey said lands to the said defendants as fully as though such conveyance were executed by said plaintiff.

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4. That the said defendants are entitled to have judgment in this cause for their costs and disbursements to be taxed.

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Let judgment be rendered and entered accordingly.

Dated and signed this 27th day of December, 1899.

S. H. MOER,
Judge of the District Court.

EXHIBIT A.

DEPARTMENT OF INTERIOR,

WASHINGTON.

February 18th, 1889.

HYDE AND McDONALD,

322 vs.

EATON AND STRAM.

Sioux Half-breed Scrip.

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323 THE COMMISSIONER OF THE
GENERAL LAND OFFICE,

Sir: I have considered the case of Thomas W. Hyde and Angus McDonald vs. Frank W. Eaton, as attorney in fact for Orillie Stram, nee Moreau, on appeal by the latter from the decision of your office, dated August 4th, 1888, holding for cancellation Sioux half-breed scrip, Nos. 19 D. and 19 E. located and adjusted as follows:

324 Scrip No. 19 D. upon lots 3, 5 and 6 and S. E. 1-4 of N. W. 1-4 Sec. 30, and that numbered 19 E. upon lots 1 and 2 and S. W. 1-4 of N. E. 1-4 and N. W. 1-4 of S. E. 1-4, same section, T. 63, N. R. 11, W., Duluth, Minnesota.

It appears that Frank W. Eaton as attorney in fact for said Orillie Stram, nee Moreau, a Sioux half-breed Indian, filed in the Duluth, Minnesota, local land office, on June 16th 1883, the scrip above mentioned, and located the same on certain

unsurveyed land, in amount three hundred and twenty acres, which locations were subsequently adjusted by the local office, and approved and posted by your office to embrace the tracts above described.

Said half-breed scrip bore date November 24th, 1856, and had been issued under the provis- 325
ions of the Act of July 17th, 1854 (10 Stat., 304), to the Sioux half-breed named above.

July 20th, 1885, Angus McDonald presented at the local office a pre-emption application for lot 2, and the N. 1-2 of the S. E. 1-4 and S. W. 1-4 of N. E. 1-4 of said section 30, which that office rejected, because the N. E. 1-4 of the S. E. 1-4 was denominated swamp and overflowed land, and as to the residue of the tract, because the date of settlement as alleged in the application to file did 326
not antedate the unadjusted scrip location No. 19 E., with which it conflicted.

On the same day (July 20th, 1885), Thomas W. Hyde applied to make pre-emption filing for lots 5 and 6 and S. E. 1-4 of N. W. 1-4 and N. E. 1-4 of S. W. 1-4 of the same section (30), which application the local office rejected, for the reason that the alleged date of settlement did not antedate the unadjust-
ed scrip location, No. 19 D. 327

November 14th, 1885, a hearing was ordered by your office upon the application of McDonald and Hyde, who alleged "that the scripee never made any improvements whatever upon said land, either in person or by an agent or attorney, and that said land, at the date of the attempted locations, was unsurveyed and belonged to the class of land only locatable with such scrip after the

scripee shall have made improvements upon the same."

In support of the charges thus made was filed a copy of an affidavit (the original is now in the record), made October 9th, 1884, by the scripee, in which she denied ever having given to
328 said Frank W. Eaton, either directly or indirectly, a power of attorney, or any authority of any kind to locate said scrip or to erect buildings and make improvements on the land in controversy, or upon any other land for her use and benefit.

In refutation of the denial made as above by the scripee, Eaton filed copies of two powers of attorney given him by said scripee and her husband, May 25th, 1883, conferring upon him the power and authority to locate said scrip, and to
329 make the improvements, which under the Act of 1854, were necessary before location could be made on unsurveyed lands; also to do any other act necessary to be done in the premises, in order to secure a permanent and bona fide location, in the same manner as if done by them personally.

The case proceeded to hearing, which was had April 6th, 1886.

The Register and Receiver, after reference to
330 the denial by the scripee that she had ever constituted or appointed Frank W. Eaton her attorney in fact to locate the scrip or to make the improvements required for its location upon unsurveyed lands, also to the fact that her position up to date of hearing seemed to be that of one attempting to set aside powers of attorney wrongfully obtained from her; also to the endeavor of Hyde and McDonald on the day of the hearing to show that the scrip locations were illegal and that

they had bona fide pre-emption claims to the disputed tracts, found as follows:

1. The scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the pre-emptors settled, and was adjusted to the surveys July 21st, 1885, nearly one year after settlement by said pre-emption claim- 331
ants.

2. The record contains duly executed powers of attorney from the scripee and her husband to F. W. Eaton, giving him the full power to do all acts necessary "to perfect and secure a permanent and bona fide location" of the scrip.

3. Eaton, under said authority employed another to go upon the land and make suitable improvements, giving directions what improvements to make and how to make them, which im- 332
provements were made for Eaton, and for the purpose claimed by him.

4. The scripee, in her complaint, while stating that she did not know Eaton and never authorized him to make improvements on these lands, admitted that she parted with the scrip and signed powers of attorney shortly before the location. She did not appear at the hearing to testify in support of the charges made by her.

333

5. She has never asked that the locations be cancelled and that the scrip be returned to her, but, on the contrary, she between the date of her complaint and the day of hearing did execute and deliver a deed of confirmation, acknowledging, ratifying and confirming all that had been done by Eaton as her attorney.

On these findings of fact, the local officers concluded that "there is nothing in evidence to

show that this scripee was misled or imposed upon by the defendant or his agents, or to controvert the fact that the scrip locations were effected in strict conformity with the usual accepted practice in such cases, and in accordance with law and the rules of the land department."

334 They accordingly held, in effect, that contestants had failed to make a case, and that the scrip locations should stand.

From that action contestants Hyde and McDonald appealed to your office assigning six specifications of error, viz:

1. That Register and Receiver were without authority to decide the cause, and could only properly report the case with their opinion upon the facts to your office.

335 2. This so-called decision was contrary to the evidence.

3. It was contrary to law.

4. It treated the case as if the controversy was between the scripee and her attorney in fact, whereas it grew out of contest by third parties, who claim to have shown that the scrip was fraudulent on the part of both the scripee and her grantees.

336 5. The local officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether the land contained improvements made by or under the personal supervision or direction of the scripee, and for her personal use and benefit.

6. They erred in finding that a confirmatory deed made between two of the parties to a fraudulent entry could bar the right of subsequent bona fide applicants.

Pending these proceedings on appeal, to-wit: April 28th, 1887, Fred F. Huntress filed in the local land office applications to contest not alone the scrip locations, as your office seems to have assumed, but also the pre-emption claims of Hyde and McDonald. Said applications were by the local office transmitted to your office, which under date August 30, 1887, returned them to the local office, with instructions that they be held subject to the final disposition of the case at bar. They have since been returned to the department and are now in the record before me. 337

Your office decision, proceeding to a review of the facts disclosed by the record, found that accompanying the scrip and applications to locate the same were what purported to be the original powers of attorney, given May 25th, 1883, by the scripee and her husband, to Frank W. Eaton; that with each application was an affidavit by said Eaton, setting out that he under said powers of attorney had caused to be built upon each of the tracts upon which the scrip was located a house, fourteen by sixteen feet, one story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of each tract, and that said improvements were made under the personal direction of the scripee, and for her personal use and benefit. 338 339

Your said office decision farther recites that in the record are what purport to be original powers of attorney given by the scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota, which they then owned or might thereafter acquire, or become interested

in, by virtue of the location of the scrip in question; to prosecute and defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, by deed, conveyance, demise or lease, in the same manner as if performed by them
340 individually.

Your said office decision further recites that in the record are certified copies of two warranty deeds, dated July 2d, 1883, and executed by said Leonidas Merritt, in the name of the scripee and her husband, under and by virtue of the power of attorney above mentioned, conveying to Edward Byrne, James H. Powers and Joseph Clement, an undivided one-third interest in and to all the land embraced in said scrip locations and
341 involved in this controversy,—the consideration named in each being $25,000.00; that there are also in the case certified copies of two warranty deeds, bearing date July 6th, 1883, executed in the same manner by the same parties of the first part, conveying to Frank W. Eaton an undivided two-thirds interest in and to the same tracts of land, the consideration named in each being $25,000.00; that Joseph Clement, one of the grantees of an undivided one-third interest, above mentioned, on
342 August 28th, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each being $250.00; that on the next day (August 29th, 1883,) as shown by certified copies on file, James H. Powers, another of the grantees of an undivided one-third interest, executed two similar deeds conveying to said Lansterf his undivided

one-ninth interest in and to said tracts, the consideration named in each deed being $350.00.

Your office decision also mention certain quit claim deeds (certified copies of which are in the record), executed and given by the several parties (except Clement), who made the above mentioned warranty deeds, the purpose of the quit claim 343
deeds being to correct imperfect descriptions in the prior warranty deeds, which together embrace all the land covered by the scrip locations.

As a result of the conveyances above recited, your office decision finds that such title as passed under said conveyance now rests as follows:

Two-ninths interest in Nicholas Lansterf by conveyance from Powers and Clement. One-ninth interest in Edward Byrne under origial conveyance from Merritt, as attorney in fact for the 344
scripee, with power to sell; two-thirds (six-ninths) interest in Frank W. Eaton, under conveyance from Merritt, as attorney in fact.

Your office then holds that "these several deeds of conveyance and release conferred no greater title upon the grantees than the grantors had, which was simply a right to these tracts of land, subject to the final adjudication and approval of these locations." 345

It then makes reference to the fact disclosed by the record that prior to the hearing before the local office, to-wit, on March 31st, 1886, the scripee and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt, relative to the tracts in question, done and performed by them under the respective powers of attorney, given as hereinbefore described.

Proceeding, then, to a consideration of the testimony taken at the hearing, your office decision finds that it "establishes by a clear preponderance the fact that said Eaton by virtue of his power of attorney employed Edward Byrne to make the
346 improvements upon the respective tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter," that Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886, never saw the land, and did not know whether scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are concerned, to remove any ob-
347 jection to the acts previously performed by the latter, under and by virtue of his said power of attorney; that the affidavits accompanying the location of said scrip appear to fulfill the requirements of the circular of May 28th, 1878 (5 C. L. O., 126.)

This would seem on its face to point to an adjudication in favor of the scrip locations; but your office decision further proceeds to say that the only other question left to pass upon touch-
348 ing the legality to these locations, is, whether the power of attorney given by the scripee to Frank W. Eaton, by virtue of which he made the locations, could carry with it, under the law, the power and authority to make the improvements, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes, that since the evidence shows clearly that the scripee in this case never saw the land, or the improvements, or had

anything whatever to do therewith, and since the circular referred to, supra, requires that the Indian shall have a direct connection with the land, and claim the same for his or her personal use, the scrip locations are not valid and should be cancelled, as speculative and made with an evident intent to evade the law, rather than to comply in good faith with legal requirements. 349

Upon a careful examination of the entire record, I find the facts to be substantially as stated by your office decision and outlined herein.

Epitomized, they are as follows:

The scripee disposed of her scrip, surrendering possession thereof to some one now unknown. Said scrip was accompanied by two powers of attorney, executed in blank, one giving authority to some one not then named to locate the scrip; 350 the other, giving a like authority to sell the land located upon. The scrip, after many years and after passing through several hands, lodged in the hands of Frank W. Eaton, who thereupon filled up the blanks in the power of attorney to locate, inserting his own name as that of attorney in fact for such purpose. He employed others to make slight improvements on the lands in question (then unsurveyed) and after such improvements, which were scarcely deserving of the name, 351 he located the scrip as attorney in fact for Orillie Stram, the scripee.

The blanks in the other power of attorney (that to sell) were filled up by inserting the name of Leonidas Merritt, who it appears was a business partner of said Frank W. Eaton, and said Merritt, as attorney in fact of the scripee, executed certain warranty deeds, transferring and passing title to the lands covered by the scrip locations to cer-

tain parties therein named, it appearing that said parties were Eaton, who had made the locations, and three men, Edward Byrne, James H. Powers and Joseph Clement, who had been by him, or through his agency, employed to make the improvements above mentioned.

352 Money consideration was expressed in said deeds, but it is apparent from the evidence that the real consideration, so far as Byrne, Powers and Clement were concerned, was what they had done in making the improvements. They got an undivided one-third interest. The residue went to Eaton.

The scripee never saw the land. At the date of the location she had never seen Eaton, who acted as her attorney in fact, and did not then
353 know that there was such a person in existence. She had, as a matter of fact, sold the scrip long prior to the location, and had no personal interest in the land, nor were the improvements made for her personal use and benefit. It was a matter of no moment to her where the scrip was located, or whether it was located at all or not. Her actual interest in the matter ceased when she disposed of the scrip. It was admitted by her so-called attorneys in fact that she was to have no interest in
354 the land. For a long time she directly and positively repudiated Eaton and Merritt as her attorneys in fact, denying that they acted for her in any capacity whatever. Afterwards and but a few days prior to the hearing, she ratified by deed what had been done by them.

This ratification, it is evident, was procured at the solicitation of Eaton or Merritt, or both, and for a consideration. But such ratification

does not change the fact that the improvements and location, though made under the guise of a power of attorney, were made, not under the direction and in the interest of the scripee, but for the benefit solely of another not even known to the scripee, viz: Eaton, who had inserted his name as attorney in the power executed in blank. 355
If the location of the scrip was illegal and invalid, then the deed of ratification could not give it validity—could not vitalize that which originally had not in it the germ or essence of legal vitality.

This case is in all essential particulars like that of Joseph W. Allen, et al., vs. Lewis Merrill, et al., decided by me this day, 8 L. D., 207—review denied, 12 L. D., 138, so far as the method of making the scrip locations is a matter of concern, and the reasons of that case are in this par- 356
ticular applicable to this. Following the ruling of that case, I must hold that the scrip locations here in question are invalid, and your office decision so holding is affirmed.

There remain for disposition the rights of Hyde and McDonald. It is asserted that the case is not in such a position that any determination ought to be made as to these claims, and that must be determined by a view of the record and proceedings taken. 357

It appears that on the 9th day of October, 1884, Hyde filed with the Register a paper addressed to the Register and Receiver, in the caption described as being "An application for leave to contest the pretended entry, with Sioux half-breed Certificate No. 19 E., for one hundred and sixty acres, issued to Orillie Moreau, on November 24th, 1856, and attempted to be located on the following described land, to-wit: "describing the

land, and that in that application, after the allegation attacking the location, the following appears:

"That said contestant is a single man over 21 years of age, and has declared his intention to become a citizen of the United States, that he
358 does not own 320 acres of land in any State or Territory, that he has not left land of his own in this state to reside on the public lands, and that he has never heretofore exercised his right under the pre-emption laws.

"That heretofore, to-wit: on the 20th day of August, A. D. 1884, the said contestant made settlement on the said described land with a view to inhabiting and cultivating the same for his own exclusive use and benefit, and intends to make his
359 declaratory statement for said land under the pre-emption laws of the United States as soon as the surveyed plat of township 63, N. of range 11, W. of 4th P. M., shall be returned to the United States Land Office at Duluth, Minn.

"Wherefore your petitioner requests that this contest may be granted and a day set for the hearing thereof."

Attached to this application was an affidavit of verification, sworn to on the 29th of September,
360 1884.

This application is stated, in the Commissioner's order for a hearing, hereinafter mentioned, to have been transmitted by the Register to the General Land Office October 31, 1884, and to have been supported by a copy of an affidavit of the scripee, which has been before spoken of.

On the 20th day of July, 1885, Hyde made application to file the Declaratory Statement pre-

viously mentioned in this opinion, which was rejected, and thirty days allowed by the Register for appeal. On the 25th day of August, 1885, the Register transmitted Hyde's appeal from that decision, to the General Land Office.

All the proceedings on the part of McDonald in respect to the land claimed by him correspond 361
exactly with those of Hyde as to the land claimed by him; and were made by the same attorneys, and at the same time respectively.

Afterwards, on the 14th of November, 1885, the Commissioner of the General Land Office, by letter "C" of that date, ordered a hearing, in which, after reciting the allegations for and against the validity of the scrip, he proceeds:

"In view of the conflicting statements re- 362
specting the legality of these locations, I deem it proper that a hearing should be held, that the respective parties may have an opportunity to submit such proof as they may have in support of their allegations, and that this office may be possessed of all the facts possible in the matter; and the same is hereby ordered.

"You will notify all parties in interest of the time and place of hearing, and at the proper time thereafter you will transmit to this office the testi- 363
mony taken thereat with your opinion thereon."

Under this order of the Commissioner, when the hearing came to be held, it seems to have been assumed by all parties that the rights of Hyde and McDonald as pre-emptors were involved; and voluminous testimony was taken, not only with respect to the rights of the scrip locators but with respect to the rights of the pre-emptors. Upon the conclusion of the hearing, the Register and

Receiver, being of the opinion that the scrip locations were valid, disposed of the pre-emptor's claims as follows:

"The bona fides of Hyde and McDonald or their rights under the pre-emption law need not be considered here, as the question of their claims
364 is contingent upon their ability to set aside the scrip locations, and thus render the land subject to pre-emption settlement.

Upon this showing of fact, we conclude that the contestants have failed to make out a case, and that the proceedings should be dismissed. It is so ordered.

The decision of the Assistant Commissioner makes no allusion to the contest in regard to Hyde
365 and McDonald, simply reversing the decision of the local officers, as to the validity of the scrip location.

Upon examination of the testimony taken at the hearing the following appears in the examination of Hyde:

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation of interest in the land? A. Yes, there was a contract.

366 Q. Where is it? A. I don't know.

Q. When and where did you last see it? A. I have not seen it since it was drawn up by Mr. White.

Q. What did it contain? A. It contained that, when I proved up, I was to secure him a one-half interest.

McDonald testified as to the land covered by his pre-emption claim:

"Judge White has no interest in it. There is an understanding that he is to have an interest in it if we succeed in this trial; he is to have a half interest. * * * The arrangement with Hyde is the same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we succeed. I don't know how much he is to get. I agreed to give him an interest if we succeeded in getting the land." 367

He further testified:

"Mr. White is paying the expenses of the claim with the understanding that he is to have half of it after we secure it."

Again—

"I am to let him have an interest in the land when I get it to pay for his time and services. The contract I have with Mr. White for his one-half is in writing." 363

When asked how he could give Mr. White a half interest, unless he should deed to him one-half, he answered: "I could not very well."

White, when put upon the stand, testified that after diligent search he was unable to find the contract.

Further evidence than that quoted from the testimony of Hyde and McDonald is unnecessary to show that they have, by the contracts which they admit having made, disqualified themselves from taking the land under the pre-emption law. 369

Counsel, in one of the briefs in the case, aver as to McDonald that the records of your office will show that he has already exhausted his pre-emption right by having made a pre-emption filing, and, having filed a formal relinquishment of this claim thereunder. I have not attempted to test

the correctness of this averment by an inspection of the records of your office. It is deemed unnecessary in view of the testimony of Hyde and McDonald, the pre-emption claimants, as to their contract to sell.

The testimony of the two claimants establishes beyond question that the statements made
370 in their application to contest, that their settlements were made wholly for their own use and benefit, was not well founded, and that it would be impossible for either of them to make the affidavit required by section 2262 R. S., "that he has not, directly or indirectly, made any agreement or contract, in any way or manner with any person whatever, by which the title which he might acquire from the government of the United States
371 should inure in whole or in part, to the benefit of any person except himself."

In view of this record and proof, it appears to be the duty of the department to dispose of these claims of pre-emption. A hearing has been had upon the validity of them, in which the evidence was adduced fully, and upon which the material facts appear to have been sufficiently elicited to leave no doubt. Whatever rights they might have established would, under a familiar
372 rule of the department, have been regarded as fixed at the time when they made their application to file. Their application to file must be treated as if they had been allowed, subject to the rights of others, and it now appears that they ought to be cancelled, if filed. Their appeal (which is sent up in the record) from the rejection of their applications, appears to bring the whole matter before the department; and in the exercise of the power of supervision vested in the department by

law, it seems to be demanded that upon this disclosure of the facts the proper action should be taken. If there had been no hearing upon this question, the proper action would be, upon a suggestion of such information, to direct a hearing to be had; but inasmuch as a hearing has been had and as the testimony which shows the absolute impossibility of perfecting a pre-emption title in these claimants has proceeded from themselves, testifying under oath, there appears no reason for directing a further hearing. 373

If their Declaratory Statements were now to be filed as of that date, the duty would rest on the department to cancel them, in accordance with the ordinary practice in such cases.

This leaves to be considered one other branch or feature of the case as now presented by the record. On April 28th, 1887, one Fred T. Huntress filed formal applications to contest the pre-emption claims of said Hyde and McDonald, respectively, his charge being that said claims were initiated not in good faith to appropriate the lands to their own exclusive use, but for speculative purposes, they having agreed to convey title to other parties when procured by them. 374

Huntress, in his affidavits of contest, asks that a hearing be ordered to enable him to substantiate by competent proof the charges made. 375

Counsel for Huntress, however, argues in a brief recently filed that further hearing is unnecessary, and that the asserted claims of Hyde and McDonald may properly be rejected and finally disposed of on the record as it now exists.

It is therefore asked that such action be taken and the scrip locations, as well as the pre-

emption claims of said Hyde and McDonald being disposed of and the record cleared of any claim to the land, that he (Huntress) be accorded the preferred right of entry on said lands.

Notwithstanding the foregoing judgment to some extent was anticipated by the petition, this
376 proceeds on the record all of which had been made up before Huntress came into the case as a pretended contestant, and was in no way or manner aided by what he did. His acts had nothing whatever to do with bringing about the rejection of either the scrip claims or those of Hyde and McDonald. Besides, an application to file a declaratory statement is hardly subject to contest. He is, therefore, in no position to claim a preferred right of entry as a successful contestant, and his
377 application to be so considered and treated must be denied. This disposes of all the claims, and asserted claims to the land, so far as disclosed by the record before me, and leaves the land in question open to disposal under the public land laws of the United States applicable thereto, and such is the judgment of this department.

The papers in the case are herewith returned.

Very respectfully,

WM. F. VILAS, Secretary.

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EXHIBIT B.

This indenture made this 31st day of March in the year of our Lord one thousand eight hundred and eighty-six between Orilie Stram (before marriage Orilie Moreau) and Roman Stram, her husband, of Crawford County and State of Wiscon-

sin parties of the first part and Frank W. Eaton of Duluth, St. Louis County, State of Minnesota, party of the second part.

Witnesseth, That whereas the said Frank W. Eaton as our duly constituted and appointed attorney in fact did on the 16th day of June, A. D. 1883, caused to be filed in the U. S. Land Office 379
at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip No. 19 D. and No. 19 E. each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton, our attorney in fact as aforesaid, vesting the title to the said land as described in said application by metes and bounds in me the said Orilie Stram (the said description being by metes and bounds for the reason that the said land 380
had not yet been surveyed by the United States) which said land has since been surveyed by the Government and a plat thereof filed in the United States Land Office at Duluth, Minnesota, and upon said plat the aforesaid scrip and entry was adjusted July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me the said Orilie Stram by the said Frank W. Eaton and intended to be entered on June 15th, A. D. 1883, in the name of me, the said Orilie Stram by 381
our attorney in fact the said Frank W. Eaton and

Whereas, we the said Orilie Stram and Roman Stram did on the 25th day of May, A. D. 1883, by two certain powers of attorney duly executed, acknowledged and delivered by us to Leonidas Merritt of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Register of Deeds for

St. Louis County, Minnesota, in book "A" of powers of attorney on pages 613 and 614 therein and thereby constituting and appointing the said Leonidas Merritt the attorney in fact of the said Orilie Stram, with full power and authority in her name and stead to grant, bargain, sell, demise,
382 lease, convey and confirm the said lands which we then owned or which we might thereafter acquire or become seized of under and by virtue of locations of Sioux half-breed scrip No. 19 E. for 160 acres of land and No. 19 D. for 160 acres of land issued to me the said Orilie Stram, and

Whereas, the said Leonidas Merritt as our attorney in fact on the 30th day of October, A. D. 1885, did by warranty deed duly executed by him convey to the said Frank W. Eaton an undivided
383 seven- ninths part and interest in said lands which according to the said survey and plat and in said deed are described as follows, to-wit: "All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6) the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast
384 quarter all being in section thirty (30) in township No. sixty-three (63) north of range eleven (11) west of the 4th principal meridian in Minnesota, containing according to the Government three hundred thirteen and 61-100 (313.61) acres of land more or less, which said warranty deed was upon the 3rd day of November, A. D. 1885, at 2 o'clock P. M. duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in book A 3 of Deeds, page 350 and in the office

of the Register of Deeds for the County of Lake in the State of Minnesota, on the 5th day of December, A. D. 1885, at 3 o'clock P. M. in Book D of Deeds, page 205. Now therefore, we, the said Orilie Stram and Roman Stram, parties of the first part do hereby fully ratify and confirm the said conveyance of said land as above described to the 385
said Frank W. Eaton by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact, Leonidas Merritt, under and by virtue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney Leonidas Merritt and in consideration of the sum of one (1) dollar to us in hand paid by the said party 386
of the second part the receipt whereof is hereby confessed and acknowledged have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the second part, his heirs or assigns forever, an undivided seven-ninths part and interest in the following described tracts, pieces or parcels of land situate in the Counties of St. Louis and Lake and State of Minnesota, known and described as follows, to-wit:

387

Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range No. eleven (11) west of the 4th principal meridian in Minnesota, containing according to the Government survey

three hundred thirteen and sixty-one hundredths (313.61) acres more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his
388 heirs and assigns forever and the said parties of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever that they are well seized in fee of the said land and premises aforesaid, and have good right to sell and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the
389 said party of the second part and his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILIE STRAM, (Seal.)
Formerly Orilie Moreau.

390 ROMAN STRAM.

Signed and delivered in presence of

JAC. RAFFUF.
ALEX. RAFFAUF.

STATE OF MINNESOTA, COUNTY OF CRAWford.—

I, Jac. Raffauf, a notary public within and for said county do hereby certify that on the 31st day of March, A. D. 1886, personally came before me Orilie Stram, formerly Orilie Moreau, and Roman Stram, her husband, to me well known to 391
be the same person described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

JAC. RAFFAUF,
Notary Public,
(Seal.) For Crawford Co., Wisconsin.

392

Filed in my office at .... o'clock .... M., Dec. 27, 1899.

GEORGE F. CHESTER,
Clerk of District Court.
By A. J. TAYLOR, Deputy.

393

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

(VENUE CHANGED TO ST. LOUIS
394 COUNTY.)

The Midway Company (Substituted for the Germania Iron Company,) Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

395

I, William A. Cant, one of the Judges of the District Court of the Eleventh Judicial District in and for the County of St. Louis and State of Minnesota, (the term of office of the Honorable S. H. Moer, before whom trial of the above entitled cause was had, having expired with the thirty-first day of December, A. D. 1899), do hereby certify and return that I have examined the proposed case hereto attached and that it con-
396 tains all the evidence, objections, rulings and exceptions and other proceedings had on the trial of the foregoing entitled action; such settlement is made upon the files in said cause, the transcript of the official stenographer who attended at said trial, whose affidavit is attached to said proposed case, and I further certify that on motion of Walter Ayers, attorney for the plaintiff, Towne & Harris, J. L. Washburn, W. B. Phelps and John Jenswold, Jr., and John Brennan appearing for

the defendants upon the settlement, I have settled and allowed the same as and for the settled case in the above entitled cause, upon behalf of the parties thereto, the hearing upon such settlement having been adjourned by the Court upon the third day of February, 1900, upon motion of defendant Hyde, to this 10th day of February, 1900. 397

I hereby certify that hereto attached, marked respectively Exhibits I and J and M to Y inclusive are copies of Exhibits offered by the defendant Hyde and excluded by the Court, being all of the Exhibits offered by said Hyde, except three Land Office decisions referred to in the transcript, and which Exhibits appear and are lettered in the order in which they are offered.

By the Court, 398

WM. A. CANT,
Judge of said Court.

Dated, February 10th, 1900.

399

STATE OF MINNESOTA, COUNTY OF Lake. District Court, Eleventh Judicial District.

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400 (Venue changed to St. Louis County.)

THE MIDWAY COMPANY, (Substituted for the Germania Iron Company, Plaintiff,

vs.

FRANK W. EATON, LEONIDAS MERRITT, ET AL., Defendants.

401

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

George P. Stillman, being duly sworn upon his oath, deposes and says, that he is, and at all the times hereinafter mentioned, was one of the official stenographers of the above entitled court; that in his capacity as such official stenographer he attended the trial of the above entitled cause,
402 which was held before the Honorable H. S. Moer, one of the judges of said court, beginning on the 12th day of June, A. D. 1899, and took full stenographic notes of all of the evidence offered or introduced, together with all the rulings of the court, objections, exceptions and other proceedings had upon said trial; that hereto annexed is a full and true transcript of the notes so taken as aforesaid by deponent, and a full and true record

of all of the proceedings had upon said trial and all of the evidence introduced in said cause.

GEO. P. STILLMAN.

Subscribed and sworn to before me, this 13th day of January, A. D. 1900.

WALTER AYERS,
Notary Public, St. Louis Co., Minn. 403

STATE OF MINNESOTA, COUNTY OF ST. Lake. District Court, Eleventh Judicial District.

(Venue changed to St. Louis County.) 404

THE MIDWAY COMPANY, Substituted for the Germania Iron Company, Plaintiff,

vs.

FRANK W. EATON, et al., Defendants.

TESTIMONY AND PROCEEDINGS HAD ON TRIAL. 405

The above cause coming on for trial at the Regular May Term of the District Court of the Eleventh Judicial District of the State of Minnesota, held at the Court House, in the City of Duluth, in the County of St. Louis, and state aforesaid, on the twelfth day of June, A. D. 1899, before—

HONORABLE S. H. MOER, *Judge*, without a Jury.

Walter Ayers and P. H. Seymour appearing as attorneys for plaintiff, John Jenswold, Jr., and John Brennan appearing as attorneys for defendant Hyde, Messrs. Washburn, Lewis & Bailey
406 appearing as attorneys for defendant Merritt, L. C. Harris and Frank Cutting appearing as attorneys for defendants Eaton, Clark and Fagan, W. B. Phelps appearing as attorney for defendant Lornstorf.

Testimony is introduced and proceedings are had herein as follows:

The case is called for trial.

MR. BRENNAN:

407 Before proceeding with the trial of this action we object and move to dismiss, for the reason that this court has no jurisdiction of the action, on the ground:

1st: That the action was commenced in Lake County and the land is situated in St. Louis County, so that the court had no jurisdiction of the action and, therefore, this court acquired no jurisdiction;

2nd: That the order changing the place of
408 trial was made by the judge at chambers and not by the court as required by the statute; made out of term and not at term time as required by statute.

In support of the first objection I wish to offer proof as to the county line between St. Louis and Lake counties.

THE COURT:

What proof do you desire to offer?

MR. BRENNAN:

That the county line between Lake and St. Louis counties runs from the mouth of Knife River due north to the boundary between Minnesota and Canada, and that where it passess through section thirty, the section in which this land is situated, that it passes east of this land some 409
rods, just how many rods I do not have in mind. I shall prove all lands west of that line prior to the Act of 1895, attempting to change the boundary line, was assessed and taxed in this county and considered part of St. Louis County. I shall show by the public records,—by public maps, which were published by public authority prior to that time showed the line to be east of this land.

MR. AYERS:

I shall be sorry if the course of this trial 410
were interfered with by objections of this kind at this stage.

MR. PHELPS:

I think defendant Lonstorf would like to enter the same objection.

MR. WASHBURN:

As far as the defendants are concerned whom I represent, we have been willing to try the case, 411
willing to reach the end of it, and we are not disposed to raise any objections to the jurisdiction of the court.

MR. AYERS:

It is admitted that the Act of the Legislature is the only authority under which this change of boundary or attempted boundary, or ascertainment of boundary is made.

MR. BRENNAN:

And that the old boundary as described in the Legislative Act establishing the County of St. Louis ran east of this land?

MR. AYERS:

Oh, I won't do that.

412 (Testimony received subject to objection. Decision on motion reserved for future argument.)

MR. AYERS:

I offer in evidence certified copy of the Land Office Receipt, dated February 23rd, 1889, and recorded in the Office of the Register of Deeds of Lake County, in Book M. of Records, transcribed from St. Louis County, at page 210.

Received without objection and marked Ex.
413 A.

(Copy page 30.)

MR. AYERS:

Certified copy of Patent from the United States of America to Emil Hartman, embracing the land in controversy, bearing date the 22nd of October, 1895, recorded in Lake County in Book L., transcribed records, pages 21 and 22.

Patent referred to marked Ex. B., and receiv-
414 ed in evidence without objection. (Copy page 31.)

MR. AYERS:

I also offer in evidence certified copy of a Deed from Emil Hartman and wife to the Germania Iron Company, bearing date June 7th, 1889, recorded in St. Louis County, Minnesota, June 12th, 1889, in Book 33 of Deeds at page 263, conveying the premises in question in this suit, and other land.

I will change that last offer. I offer in evidence Book 33 of Deeds in the Register of Deeds' Office, St. Louis County, Minnesota, at page 263, and so forth, being record of a deed from Emil Hartman and wife to the Germania Iron Company, bearing date June 7th, 1889, conveying the premises in question, it being admitted that the record referred to is the original record in the Office of the Register of Deeds of St. Louis County. 415

Received without objection. (Copy page 217.)

MR. AYERS:

I offer in evidence Book 153 of Deeds in the Office of the Register of Deeds, St. Louis County, Minnesota, page 449, being record of a deed bearing date January 3rd, 1898, by the Germania Iron Company to the Midway Company, conveying the premises in question, such book being original records of St. Louis County. 416

Received without objection. (Copy page 220.)

MR. AYERS:

I offer in evidence certified copy of a deed bearing date the 26th of February, 1889, made by Emil Hartman to A. M. Miller, conveying the premises in question, and other lands, which deed is recorded in the Office of the Register of Deeds of St. Louis County, in Book 23 of Deeds, page 285, and in Lake County in Book M. of transcribed records at page 648. 417

No objection and paper referred to is marked Ex. D. (Copy page 38.)

MR. AYERS:

I offer in evidence certified copy of a deed bearing date the 11th day of June, 1889, made by A. M. Miller and wife to the Germania Iron Company, conveying, with other property the premises in question; which deed is recorded in
418 St. Louis County in Book 34 of Deeds, at page 592, and in Lake County in Book M. of transscribed records, page 765.

No objection and paper referred to is marked Ex. D. (Copy page 38.)

MR. AYERS:

I offer in evidence certified copy of the Decision of the Secretary of the Interior, February 18th, 1889, in the case of Hyde and another against Frank W. Eaton, being the same instru-
419 ment as was offered this morning in the case of The Midway Company against Eaton and others as Exhibit A.

MR. BRENNAN:

I object to that for the reason it is not a correct copy as shown by the decision of,—the subsequent decision of Secretary Noble.

Objection over-ruled. (Copy page 43.)

MR. AYERS:

420 I offer in evidence certified copy of the testimony of Eaton and others and of the exhibits referred to therein, in the case of Thomas W. Hyde and others against Eaton and others, in the Land Office of the Duluth Land District, being the same document which was offered in evidence by plaintiff in the case of The Midway Company against Eaton and others this morning as Exhibit B.

No objection and paper is marked Ex. E. (Copy page 62.)

MR. AYERS:

I offer in evidence certified copy of the Decision of the Secretary of the Interior, bearing date December 21st, 1894, in the case of McDonald and others against Emil Hartman and others. I offer this in evidence as against Thomas W. Hyde

421

MR. BRENNAN:

I wish to object to that at this time for the reason that it is incompetent, irrevelant and immaterial. Also as to order of proof.

Objection sustained.

Paper referred to marked Ex. F.

Offer withdrawn for the present.

422

PLAINTIFF RESTS.

The corporate character of the plaintiff and its grantor, the Germania Iron Company, is admitted.

423

It is stipulated on behalf of the plaintiff that the evidence and admission which formed a part of the record in the case of The Midway Company against Frank W. Eaton and others affecting lots three, five and six in section thirty, sixty-three, eleven, shall be considered in evidence in this case as to the defendants Clark, Merritt, Fagan, Lornstorf and Eaton, subject to

the same objections and with the same effect as if the documents and evidence referred to had been actually introduced in evidence in this case and as if the admissions had been made in the record in this case.

MR. HARRIS:

424 The defendants Eaton, Lornstorf, Merritt, Fagan and Clark rest.

J. M. SMITH, called as a witness in behalf of the defendant Hyde, being first duly sworn, testifies as follows:

425

DIRECT EXAMINATION.

BY MR. BRENNAN:

Q. Mr. Smith, what official position do you now hold? A. I am Receiver of the United States Land Office at Duluth.

Q. Minnesota? A. Yes sir.

Q. Have you in your possession certified
426 copies of the original affidavit of contest of Thomas W. Hyde against Stram, scrip location No. 19 D., located on land in section thirty, township sixty-three, range eleven? A. I have.

Q. Will you produce them?

(The witness produces papers.)

MR. BRENNAN:

I offer certified copy of affidavit of contest of Thomas W. Hyde, also of Angus McDonald.

MR. AYERS:

I object to these upon the ground that under the answer in this case no evidence on the part of Hyde is competent.

Received subject to objection. (See p. 13.)

MR. HARRIS: 427

The defendants Eaton, Merritt, Lonstorf and Fagan object to them on the ground that they are incompetent, irrevelant and immaterial, no proper foundation having been laid for the introduction of the same.

Received subject to objection. Papers referred to marked Ex. 1. (See p. 13.)

By consent of parties Exhibit 1 is returned to the witness, who is to make a certified copy of the same, which is to take the place of Ex- 428
hibit 1.

Paper marked Hyde's Exhibit 2.

MR. BRENNAN:

I offer in evidence Hyde's Exhibit 2, being the papers by which scrip 19 D. and 19 E. were located on land in section thirty, township sixty-three, range eleven.

MR. AYERS:

Objected to upon the ground it is incom- 429
petent, irrevelant and immaterial. Further upon the ground that it appears conclusively from the Decision of Secretary Vilas, which has been introduced in evidence in this case, that Hyde had no rights whatever in this land in controversy. That decision is final and conclusive. Further, upon the ground that there is no allegation in the answer of Mr. Hyde which warrants the introduction of any evidence whatever.

The witness J. M. Smith, Receiver of the Land Office, now produces an attested copy of Ex. 1, which is now marked Ex. 1, and is to take the place of the original exhibit.

MR. WASHBURN:

The defendants Merritt, Fagan, Clark and
430 Lornstorf and Eaton interpose the objection at this time to this testimony, and to all testimony on the part of the defendant Hyde, on the ground that the same is incompetent, irrelevant and immaterial; that there is no foundation laid for the introducing of this or any other testimony in the pleadings in this action.

MR. BRENNAN:

I object to counsel for these defendants tak-
431 ing part in the issue between Mr. Hyde and The Midway Company, for the reason that there is no controversy or issue between us, whatever. Mr. Washburn, as against you I make no claim. You make no claim as against us?

THE COURT:

Is it your intention to be bound by this case?

MR. WASHBURN:

We expect to be bound by it. I don't see why we should stipulate. My idea of this case and
432 the facts are such that if Mr. Ayers wins for his clients Mr. Brennan and I are out; and my idea is if we win they are out, both of them.

THE COURT:

And Mr. Hyde?

MR. WASHBURN:

Yes sir.

THE COURT:

And if Mr. Hyde wins you are out?

MR. WASHBURN:

Yes sir.

MR. BRENNAN:

Is that the position of all the defendants?

MR. HARRIS:

It is.

MR. PHELPS: 433

The Court is to decide the question as to all the parties in the case.

MR. AYERS:

I don't understand that I am to be taken as either assenting or dissenting.

434

A. B. ROSS, called as a witness in behalf of the defendant Hyde, being first duly sworn, testifies as follows:

(Testimony received subject to objection.)

DIRECT EXAMINATION.

BY MR. BRENNAN:

Q. Mr. Ross, what is your business? A. Lawyer. 435

MR. AYERS:

It is understood this testimony is objected to as being incompetent, irrevelant and immaterial, and for the reason stated in the objections preceding and that all the testimony be considered as taken subject to this objection?

MR. BRENNAN:

Yes sir.

MR. WASHBURN:

The same.

BY MR. BRENNAN:

Q. Where do you practice law? A. West Superior.

Q. Are you a stenographer, shorthand writ-
436 er? A. I have been, yes.

Q. I show you books one, four, five and six—

Book of testimony marked Hyde's Ex. 3.

Book of testimony marked Hyde's Ex. 4.

Book of testimony marked Hyde's Ex. 5.

Book of testimony marked Hyde's Ex. 6.

Q. I show you defendant Hyde's Exhibits 3, 4, 5 and 6, purporting to be evidence taken in the case of Angus McDonald and others against Emil
437 Hartman and others. Did you ever see the original of those and if so where? A. In the Commissioner's office at Washington.

Q. When? A. I think about two weeks ago.

Q. Did you ever compare any part of these exhibits with the original books of evidence on file in that action in the Commissioner's office? A. I compared certain pages in each book with the original on file.

438

Q. Are you able from the comparison which you made to state that those pages which you compared are true and correct copies of the originals and of the whole thereof? A. I corrected them so that they conform to the original.

Q. Will you state the pages which you so compared? A. On Book 1, pages 1 to 25. I will say that sometimes it is not an entire page, but it is the testimony of S. F. White down to and in-

cluding the signature there,—no, that was not the testimony of White. Book 1 to 25, that is just the testimony of White's. No—the testimony of White.

Q. Is that the place where Hyde rests as appears in that case? A. Yes. Same book testimony of S. F. White, 320 to 331. Same book, testimony of Angus McDonald, 331 to 333. This is Book 4 — 439

Q. To 333. Do you mean to say you compared-- A. All the testimony of Angus McDonald appearing on those pages. That is true of each one of these. Book 4, testimony of T. W. Hyde, page 1542 to 1623. Testimony of S. F. White, 1478 to 1524; testimony of Angus McDonald 1524 to 1542; testimony of Thomas Ross, 1623 to page 1 of Book 5. In Book 5, testimony of T. W. Hyde 1642 to 1664; James H. Powers, 1665 to 1686; Angus McDonald 1695 to 1714; William T. Bailey 1718 to 1741. Book 6, N. B. Thayer, 2097 to 2107; E. G. Swanstrom, 2104 to 2106; R. N. Marble, 2108 to 2111; S. F. White 2274 to 2280; R. T. Edson, 2280 to 2282. 440

Q. The original testimony consists of how many volumes of those books? A. Six, I think. There are two boxes of them. There were just that four in that one box. 441

Q. From the comparison which you made are you able to state that the testimony of the witnesses as they appear on the respective pages which you have given, as they appear in Hyde's exhibit 3, 4, 5 and 6 are true and correct copies of the original or corresponding pages of the original? A. Yes sir.

At this time an adjournment is taken until tomorrow morning, Tuesday, June 13th, 9:30 A. M.

442

Tuesday, June 13th, 1899.

9:30 A. M.

Case called.

MR. WASHBURN:

In view of what has taken place I will ask leave to open the case of Clark, Eaton and others so as to offer in evidence,—so that it may be in as to all parties, these two exhibits of ours, the record and the exhibit. Part of that record is in, in-
443 troduced by plaintiff, part of it without objection, but there seems to have been some question raised as to some of the record, and if there is any question about it I think we would prefer to have it in; and, inasmuch as that question has been raised since the testimony was closed I will ask leave at this time, before the argument proceeds farther, to open the case to that extent and offer in evidence the exhibits, defendant Clark, Eaton and others exhibits number 1 and 2.

444 MR. BRENNAN:

Are these offered as against Hyde—

MR. WASHBURN:

Offered as against everybody. Offered for all purposes.

MR. BRENNAN:

Are these offered as against Hyde on behalf of the defendants and plaintiff?

MR. WASHBURN:

They are offered by these defendants, Clark, Fagan, Merritt, Eaton and Lornstorf, for all purposes and as against everybody in this case.

MR. BRENNAN:

I understand that they were in by stipulation. as fa. as Hyde's co-defendants and plaintiff were concerned. Is that the way? 445

THE COURT:

I didn't know they were in by stipulation. They were offered and received. There was a stipulation made in the first case, agreed to between plaintiff and defendants in the second case, the one we are now trying, and they are now offering this. They were offered in evidence and received in the case yesterday, but I don't know whether they were as against you, or not. 446

MR. BRENNAN:

I don't so understand that. This is an anomalous proceeding at this time and in view of the situation, the manner in which Mr. Washburn agreed here yesterday, it is still more peculiar as to what the order of proof should be. Of course there is no affirmative relief asked by Mr. Washburn as against us, and the Court is to determine the relief. 447

MR. WASHBURN:

We ask pretty broad relief.

MR. BRENNAN:

Do you ask as against us?

MR. WASHBURN:

We set out in our answer your connection with this case throughout.

MR. BRENNAN:

I wish to object,—Do I understand this is in as against the plaintiff as well as—

THE COURT:

Against the plaintiff and against everybody that it affects.

448 MR. BRENNAN:

I object to that part of exhibit 2 which relates to the alleged contract between Hyde and McDonald on the ground that it is incompetent, irrelevant and immaterial.

THE COURT:

Is that the contract with Mr. White?

MR. BRENNAN:

449 Yes. Also not covered by the pleadings. I have no objection to that part of exhibit 2 which contains the papers by which scrip 19 D. and E. were located. Neither have I any objection to that part of exhibit 1 which contains these papers. The rest of exhibit 1 I object to on the ground that it is incompetent, irrelevant and immaterial.

Objection to exhibit 1 is withdrawn.

Objection to exhibit is over-ruled, to which ruling counsel duly excepts.

450 (Copy of exhibit 1 page 179.)

(Copy of exhibit 2 page 106.)

MR. WASHBURN:

Does Mr. Brennan withdraw the offer which he made?

MR. BRENNAN:

No.

MR. WASHBURN:

Does he still make the offer?

MR. BRENNAN:

The offer stands there.

(This refers to offer of Hyde's exhibit 2 where it is offered on page 9.)

MR. AYERS:

I will ask counsel whether he intends to 451
introduce any evidence whatever tending to show that these deeds were not,—purported deeds were not genuine, or that the Midway Company has parted with such title as it acquired by virtue of any of the conveyances introduced in evidence here?

MR. BRENNAN:

I don't see the materiality of that on this motion.

452

THE COURT:

I would like to know if this case is going to be tried purely upon technical grounds. If so I am going to have the case tried on that basis. I supposed the only question between you was the one raised in the pleadings. No question made against the title. If this case is going to be tried upon every question raised in the pleadings I want them raised and tried as we go along.

MR. BRENNAN: 453

I don't make any point on the instrument as being fraudulent.

MR. AYERS:

Or that the Midway Company has parted with such title as it got—

MR. BRENNAN:

I don't make any such contention.

MR. AYERS:

I now desire to join in the motion with Mr. Harris to exclude all evidence under the answer of the defendant Hyde.

MR. WASHBURN:

You don't intend to attack our several con-
454 veyances?

MR. BRENNAN:

After we get through with this objection I will explain to you just what I want,—my position. I am not trying this case on technicalities and am not subject to cross examination in the heat of an argument. I wish to confine the argument to the express question before the Court.

THE COURT:

455 Very well; then it is an objection to any evidence, as I understand it.

MR. AYERS:

The motion to exclude evidence made by Mr. Harris and joined in by me.

MR. BRENNAN:

I will strike out the 5th and 4th lines from the last paragraph 17, substituting in paragraph 19 in line 4, after the words "officer" "On the same grounds" and ask the Court to add this to
456 the close of paragraph 19—I wish to strike out all following the word "No" in the 4th line from the last of paragraph 19, so it would read "On the mistaken and erroneous assumption that there were costs when in truth and in fact there were no such costs and the record and uncontradicted evidence before them show this to be a fact, that said Hyde was not a contestant under the Act of May 14th, 1880." And also insert immediately following the last insertion "that the said wrong-

ful and erroneous assumption on the part of the said land officers influenced them and each of their decisions and they and each of them were thereby mislead and were it not for such mistaken and erroneous assumption the decision by the said secretary would be as by right it ought to be, in favor of said Hyde." I ask that these amendments be allowed. 457

MR. AYERS:

I object to the allowance of this amendment.

Objection sustained and proposed amendment denied, to which ruling counsel duly excepts.

At this time a recess is taken until 2 P. M.

458

2 P. M.

Case called.

After completion of argument the objection is sustained to the introduction of any evidence on the part of the defendant Hyde.

MR. BRENNAN:

I make a separate motion to amend by striking out the 4th and 5th lines from the last in paragraph 19 the words "And on the false testimony produced by those opposing the defendant Hyde that there was such costs and that he refused to pay them." 459

Mr. Ayers objects to the proposed amendment.

MR. BRENNAN:

I offer in evidence the testimony of S. F. White as contained in Hyde's exhibit 3 on pages 15, 16, 17 and 18, including the three lines on 19.

MR. AYERS:

That is objected to on the ground that it is already covered by the motion to exclude evidence, which is passed on. On the further ground that it is incompetent, irrelevant and immaterial; not within any issue made by the pleadings; that
460 it is fragmentary, does not purport to be the whole evidence introduced on that case. Against the Secretary's decision as matter of fact.

MR. BRENNAN:

I propose to show, in connection with this, all the testimony that there was before Secretary Smith on the decision made November 21st, 1894.

Objection sustained, to which ruling counsel duly excepts.

461 MR. BRENNAN:

I also offer in evidence pages 22 and 24 inclusive of the same exhibit, being additional testimony of S. F. White.

MR. AYERS:

Objected to on the ground that it is covered by the ruling already made by the Court excluding evidence. Further ground, incompetent, irrevelant and immaterial. Further ground that it does not purport to be all the evidence introduced upon the
462 hearing referred to; only fragmentary, and it is incompetent under the pleadings. Within no issue.

Objection sustained, to which ruling counsel duly excepts.

MR. HARRIS:

Will it appear that the scrip defendants join in all these objections with the plaintiff, and as to the scrip defendants on the further ground

that they are not bound by testimony in a proceeding to which they were not a party.

MR. BRENNAN:

Also offer in evidence pages 1648 and 1649 of Hyde's exhibit 5. (Hyde's testimony.)

MR. AYERS:

The same objection as to the two preceding 463
offers.

MR. HARRIS:

The same objection on the part of the scrip defendants.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

Also offer in evidence pages 1646 to 1652 of the same exhibit. 464

MR. AYERS:

The same objection as to the next preceding offer.

MR. HARRIS:

The same objection on the part of the scrip defendants as to the preceding offer.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I offer in evidence pages 2097 to 2104 inclusive, and 2106 and 2107 of Hyde's exhibit 6, being the testimony of N. B. Thayer. 465

MR. AYERS:

The same objection as to the next preceding offers.

MR. HARRIS:

The same objection on the part of the scrip defendants as in the preceding offers.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I offer in evidence the testimony of E. G. Swanstrom as it appears on pages 2104 to 2106 inclusive of Hyde's exhibit 6.

466 MR. AYERS:

The same objection as to the preceding offer.

MR. HARRIS:

The same objection upon the part of the scrip defendants.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

467 I offer in evidence the testimony of R. N. Marble as it appears on pages 2108 to 2111 inclusive, Hyde's exhibit 6.

MR. AYERS:

The same objection as to the preceding offers.

MR. HARRIS:

The same objection upon the part of the scrip defendants as to the preceding offers.

Objection sustained, to which ruling counsel duly excepts.

468 MR. BRENNAN:

I also offer in evidence the testimony of R. T. Edson as it appears on pages 3280 to 2282 inclusive, Hyde's exhibit 6.

MR. AYERS:

The same objection as to the preceding offers.

MR. HARRIS:

The same objection on the part of the scrip defendants as to the preceding offers.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I will now offer to show that this is all the testimony that was introduced on the hearing had in June, 1891, and upon which Secretary Noble's decision is based of November 21st, 1894. 469

MR. AYERS:

How is it proposed to prove that?

MR. BRENNAN:

I propose to prove it by competent proof.

MR. AYERS:

I want an objection to the offer. I want to know just how you propose to prove it; because then there might be a reason that don't appear now. You know how you are going to prove it? 470

MR. BRENNAN:

That is our look out, I think, if it is not competent.

THE COURT:

Your offer won't avail you much unless you produce your witnesses on a question of that kind. Produce your witnesses to prove it.

471

JOHN BRENNAN, being first duly sworn, testifies as follows:

I propose to show that this testimony of these witnesses is all the evidence which was introduced on that hearing relating to the payment of costs and Land Office fees.

MR. AYERS:

I object to this offer or the reception of any evidence under it for the reasons already stated

as to the next preceding offers. In addition thereto, that it is incompetent for the reason that the record is the best evidence and it or a duly certified copy must be produced. It is only the conclusion of the witness that he draws. That the whole record itself or a properly authenticated
472 copy of it is the only competent evidence of what that record contains.

MR. HARRIS:

The scrip defendants join in the objection, and object on the further ground that it is not shown that the witness has any knowledge of the facts as to which he proposes to testify.

Objection sustained, to which ruling counsel duly excepts.

473 MR. BRENNAN:

I now offer in evidence pages 329 to 331 of Hyde's exhibit 3, being the testimony of S. F. White as to the recission of the alleged contract mentioned in Vilas' decision.

MR. AYERS:

The same objection as to the offers preceding. Already been decided by the ruling of the Court excluding all evidence. Incompetent under the pleadings, irrevelant and immaterial.
474 Further, that it does not purport to be anything more than a fragment of the testimony or evidence in the matter referred to.

MR. HARRIS:

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I now offer in evidence the testimony of Angus McDonald as to the whereabouts of the alleged contract mentioned in Vilas' decision, as it appears on pages 331 to 333 of Hyde's exhibit 3.

MR. AYERS: 475

The same objections as to the next preceding offer.

MR. HARRIS:

The same objection on the part of the scrip defendants as in their preceding objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I now offer in evidence the testimony of T. 476
W. Hyde as it appears on pages 1542 to 1623 of Book 4 and Book 5, being Hyde's exhibits 4 and 5.

MR. AYERS:

The same objection.

MR. HARRIS:

The same objection upon the part of the scrip defendants as to the preceding offer.

Objection sustained, to which ruling counsel duly excepts. 477

MR. BRENNAN:

I offer in evidence the testimony of S. F. White in relation to the cancellation of the contract mentioned in Vilas' decision, pages 1478 to 1524 inclusive, of Hyde's exhibit 4.

MR. AYERS:

The same objection as to the next preceding offer.

MR. HARRIS:

The same objection upon the part of the scrip defendants as to the preceding offer.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

478 I now offer in evidence the testimony of Angus McDonald in reference to the cancellation of the contract mentioned in Vilas' decision, as it appears on pages 1524 to 1542 of Hyde's exhibit 4.

MR. AYERS:

The same objection as to the preceding offers.

MR. HARRIS:

The same objection upon the part of the scrip defendants as in their preceding offer.

479

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I now offer to prove by John Brennan that that is all the evidence in relation to the cancellation of the contract mentioned in Vilas' decision which was produced on the hearing upon which Secretary Smith based his decision of November 21st, 1894.

480 MR. AYERS:

I object to this offer for the reasons as given to the next preceding offer and, in addition thereto, that the testimony of John Brennan is not competent to show what the record contained, or as to what point the testimony or any part of it in that record was directed. That the record itself or a duly authenticated copy thereof and all of the same is the only competent record showing

what was considered by the officers of the Land Department.

MR. HARRIS:

The same objection for the scrip defendants.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN: 481

I suppose you will take judicial notice of the rules of the Land Department.

THE COURT:

I presume so, but I think it will be safe to introduce them. I am not so sure about that.

MR. BRENNAN:

I will offer the issue of 1880, approved December 20th of that year. I offer rules 57 and 58. 482

Book of Rules referred to marked Hyde's Ex. 7.

MR. AYERS:

That offer is objected to on the ground that it is covered and embraced within the previous ruling of the Court excluding evidence. Further, it is incompetent, irrevelant and immaterial. Within no issue raised by the pleadings. Further as incompetent as being in derogation of the decision of the Land Department introduced in evidence in this cause. Further, there is no proper authentication of these rules. Further, there is no proof that these rules were in force at the time of the hearing of the contest. 483

MR. HARRIS:

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I offer in evidence the Certificate of the Secretary of the Interior, as it appears in the Rules of Practice of the United States District Land
484 Offices, General Land Office, Department of the Interior, purporting to be printed by governmental authority.

Page of book referred to marked Hyde's Ex. 8.

MR. AYERS:

The same objection as to the preceding offer.

MR. HARRIS:

The scrip defendants join in the same.

485 Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I now offer to prove that these were the rules in force, that is, the rules in force from the time of their issue to 1885.—until after the rules of 1885 were promulgated.

MR. AYERS:

How do you propose to make that offer good?

MR. BRENNAN:

486 I propose to prove it by two sources, Copp's Land Laws, and also by myself, practicing before the Land Department at that time.

MR. AYERS:

Objected to upon the ground that this offer is covered by the ruling of the Court as to the exclusion of all evidence. Further, incompetent, irrelevant and immaterial and not within any issue raised by the pleadings. That it runs counter

to the decision of the Land Office in this case, and further, that the means of proof offered are incompetent, as to Copp's Land Laws, it is not an official publication; and as to the testimony of the witness, that it is not competent to testify as to what the rules of the Land Office were or when they took effect or for how long they were in force. 487
That the rules must speak for themselves.

MR. HARRIS:

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I wish now to offer to show that Thomas W. Hyde was in possession of the southeast quarter 488
of the northwest quarter of section thirty, sixty-three, eleven west, being the land in controversy at the time of the cancellation of Sioux half-breed scrip 19 E. and 19 D., and that he has been in the open, notorious and exclusive possession of the same ever since that time, cultivating the same, cropping and using the same for husbandry in the general manner in which land in that vicinity is used during all said time, with the intention of acquiring the same as a homestead. I offer 489
to prove that by the defendant Thomas W. Hyde.

MR. AYERS:

Objected to upon the ground that it is covered by the ruling of the Court excluding all evidence. Further, it is irrelevant and immaterial.

MR. BRENNAN:

I want to insert after "homestead" "under the laws of the United States."

MR. HARRIS:

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

490 I wish also to prove by Thomas W. Hyde that he at that time and ever since has been qualified to enter that land as a homestead.

MR. AYERS:

I object to that on the ground it is covered by the ruling of the Court excluding evidence. On the further ground that it is incompetent and immaterial; on the further ground that the matter proposed to be proven by Mr. Hyde has al-
491 ready been covered by the decision of the Land Department.

MR. HARRIS:

The same objection. The further objection that the witness has not been offered.

MR. BRENNAN:

I will produce the witness if you desire it.

MR. HARRIS:

Is the witness in court?

MR. BRENNAN:
492 He is in court.

MR. HARRIS:

Then I withdraw the objection.

MR. BRENNAN:

I offer in evidence the decision in the case of Aldrich vs. Anderson, 2 L. D. 71. Mathias & Ward vs. Williams, 3 LD. 282 Mathews & Ward vs. Williams, 6 L. D. 95, and all of these decisions as they appear in the decision of the Department

of the Interior published by governmental authority. Commencing on those pages which I have given I offer all the decisions in those cases as they appear in these publications.

MR. AYERS:

Objected to upon the ground that the offer is already covered by the previous ruling of the Court excluding evidence. On the further ground, incompetent, irrelevant and immaterial. On the further ground that if these decisions can be noticed at all by the Court they will be so judicially; otherwise that the offer is incompetent, the decision not being certified or in any manner authenticated. 493

MR. HARRIS:

The same objection in behalf of the scrip defendants. 494

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I wish to show that Emil Hartman, one of plaintiff's grantors, and the party to whom patent was issued, had knowledge, actual knowledge and notice of the contest of Thomas W. Hyde against scrip location 19 D., being lots 3, 5 and 6.

MR. AYERS: 495

Objected to for the reason further as having been already passed upon by the Court, and the further reason, incompetent, irrelevant and immaterial.

MR. HARRIS:

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

I wish to show by certified copy that Thomas W. Hyde on May 22nd, 1889, duly made an application to enter the land in controversy as a homestead; that he at that time tendered the land office fees.

496 MR. AYERS:

Objected to on the ground that the question has already been passed upon by the Court. For the further reason that it is incompetent. Matter is foreclosed by the decision of the Secretary of the Interior. For the further reason that the proposed instrument is not in any manner verified or authenticated save by the mere affidavit of some person unknown to the plaintiff.

MR. HARRIS:

497 The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

(The second and third pages of paper marked Ex. A. are the papers specifically offered.)

MR. BRENNAN:

I now ask the Court for permission to strike out the 4th and 5th lines from the last paragraph 17, of the Answer of the defendant Hyde.

498

Motion denied, to which ruling counsel duly excepts.

MR. BRENNAN:

I wish to offer in evidence pages 1 to 25 of exhibit 3, which has not heretofore been offered.

MR. AYERS:

Objected to upon the ground that the offer has already covered by the ruling of the Court.

Further, upon the ground that it contains only a portion of the testimony or record. On the ground it is incompetent, irrelevant and immaterial and within no issue properly raised by the pleadings. Further, for the reason that the matter has been officially passed upon by the Land Department.

MR. HARRIS: 499

The scrip defendants join in the same objection.

Objection sustained, to which ruling counsel duly excepts.

MR. BRENNAN:

We rest.

500

At this time an adjournment is taken until tomorrow morning, Wednesday, June 14th, at 9:30 A. M.

Wednesday, June 14th, 1899.

9:30 A. M.

Case called.

501

Argument is taken up on the question as to the jurisdiction of the Court to try this case.

MR. PHELPS:

The defendant Lonstorf withdraws his objections to the jurisdiction of the Court.

After completion of argument as to the jurisdiction of the Court the objection is over-ruled, to which ruling counsel for the defendant Hyde duly excepts.

COPY OF EXHIBIT A.

No. 1989.

Filed Mch. 1st, A. D. 1889, at 9 A. M.

VALENTINE

No. 4.

LAND OFFICE at Duluth, Minn.,

Feb. 23-1889.

502 $1.00.

Received of Emil Hartman one dollar in full of location fees on Valentine Warrant No. 117 Location "E" for S. E. of N. W. Sec. 30, Tp. 63, N. R. 11 West, issued under Act of April 5th, 1872.

C. P. MAGINNIS,
Receiver.

STATE OF MINNESOTA, COUNTY OF ST.
503 Louis.—ss.

I, Peter J. Borgstrom, Register of Deeds of said County, do hereby certify that the foregoing instrument, commencing on page 310 of this record is a true and correct copy of the records in my office as found in Book "D." of Miscellane, page 105. That I have compared such copy with the original record and that it is a correct transcrip therefrom.

Dated this 11th day of December, A. D. 1895.

504 P. J. BORGSTROM,,
Register of Deeds.

(Register of Deeds,)
(St. Louis Co., Minn.)

OFFICE OF REGISTER OF DEEDS, LAKE County, Minnesota.—ss.

I, Charles M. Floathe, Register of Deeds of said county and state, do hereby certify that I

have compared the foregoing paper writing with with the original record now remaining in this office, and that the same is a correct transcript therefrom and of the whole of said original record as the same appears in Book "M" of Records transcribed from St. Louis County, page 310. In witness whereof, I have hereunto subscribed my 505
name and affixed my official seal at the Court House in said county this tenth day of June, A. D. 1899.

CHARLES M. FLOATHE,
Register of Deeds.
By.....Deputy.

(Seal.)

(Ten cent revenue stamp cancelled.)

506

COPY OF EXHIBIT B.

No. 7868.

Filed Nov. 25th, at 3 P. M.

R.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the Act of Congress 507
approved April 6th, 1872, entitled "An Act for the relief of Thomas B. Valentine" there has been deposited in the General Land Office Special Certificate of Location E. No. 117 for 40 acres, in favor of Thomas B. Valentine, with evidence that the same has been duly located upon the south east quarter of the north west quarter of section thirty in township sixty-three north of range eleven west of the fourth principal meridian in the dis-

trict of lands subject to sale at Duluth, Minnesota, containing forty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General. The said special certificate of location having been duly assigned to Emil Hartman, in
508 whose favor said tract has been located.

Now know ye, that there is therefore granted by the United States unto the said Emil Hartman as assignee as aforesaid and to his heirs the tract of land above described.

To have and to hold, the said tract of land, with the appurtenances thereof, unto the said Emil Hartman as assignee as aforesaid and to his heirs and assigns forever.

509 In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twenty-first day of October in the year of our Lord one thousand eight hundred and ninety-five and of the independence of the United States the one hundred and twentieth.

510 By the President,

GROVER CLEVELAND,

By M. McKEAN,

Secretary.

L. Q. C. LAMAR,

Recorder of the General Land Office.

Recorded Vol. 1, page 162.

(United States General Land Office.)

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I, Peter Borgstrom, Register of Deeds of said county, do hereby certify that the foregoing instrument commencing on page 21 of this record is a true and correct copy of the records in my office as found in Book 122 of Deeds, page 154. 511
That I have compared such copy with the original record and that it is a correct transcript therefrom.

Dated this 30th day of Dec., A. D. 1895.

P. J. BORGSTROM,,
Register of Deeds.

(Register of Deeds,)
(St. Louis Co., Minn.)

OFFICE OF REGISTER OF DEEDS, LAKE 512
County, Minnesota.—ss.

Charles M. Floathe, Register of Deeds of said county and state, do hereby certify that I have compared the foregoing paper writing with the original record now remaining in this office, and that the same is a correct transcript therefrom and of the whole of said original record as the same appears in Book "L" of Records, transcribed from St. Louis County, on pages 21 and 22. 513

In witness whereof, I have hereunto subscribed my name and affixed my official seal at the Court House in said county this tenth day of June, A. D. 1899.

CHARLES M. FLOATHE,
Register of Deeds.
By.....Deputy.

(Seal.)

(Ten cent revenue stamp cancelled.)

COPY OF EX. C.

No. 13216.

SPECIAL WARRANTY DEED.

Filed for record this 2nd day of Dec., A. D. 1889, at 12 o'clock M.

514 EMIL HARTMAN AND WIFE,

to

ANDREAS M. MILLER.

This indenture made this 26th day of February in the year of our Lord one thousand eight hundred and eighty-nine between Emil Hartman and Betty Hartman, his wife, of Duluth, Minnesota, parties of the first part, and Andreas M. Miller of the same place, party of the second part.

515 Witnesseth, that the said parties of the first part, in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain and sell, release and convey to the said party of the second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as

516 follows, to-wit:

The northwest quarter of the southeast quarter (N. W. 1-4 of S. E. 1-4) the southeast quarter of the northwest quarter (S. E. 1-4 of N. W. 1-4) and lot six (6), all in section thirty (30) in township sixty-three (63) north of range eleven (11) west.

Together with all and singular the hereditaments and appurtenances thereunto belonging

or in any wise appertaining. And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant with the said party of the second part, his heirs, executors, administrators and assigns, that they have not made, done, executed or suffered any act or thing whatsoever whereby the above described premises, or any part thereof now are or at any time hereafter shall or may be imperilled, charged or encumbered in any manner whatsoever, and the title to the above granted premises against all persons lawfully claiming the same from or under them, the said parties of the first part will forever warrant and defend. 517

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. 518

EMIL HARTMAN, (Seal.)
BETTY HARTMAN, (Seal.)

Signed, sealed and delivered
in presence of
WM. W. BILLSON.
A. H. CRASSWELLER.

519

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Be it known that on this 26th day of February, 1889, before me personally came Emil Hartman and Betty Hartman, his wife, to me known to be the same persons described in and who executed the foregoing instrument and they severally acknowledged that they executed the

same freely and voluntarily and for the uses and purposes therein expressed.

W. W. BILLSON,
Notary Public, St. Louis Co., Minn.

(Notarial Seal, St. Louis Co., Minn.)

520

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I, Peter Borgstrom, Register of Deeds of said county, do hereby certify that the foregoing instrument, commencing on page 648 of this record is a true and correct copy of the records in my office as found in Book 23 of Deeds on page 285. That I have compared such copy with the original
521 record and that it is a correct transcript therefrom.

Dated this 11th day of November, 1895.

P. J. BORGSTROM,,
Register of Deeds.

(Register of Deeds,)
(St. Louis Co., Minn.)

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522 OFFICE OF REGISTER OF DEEDS, LAKE County, Minnesota.

I, Charles M. Floathe, Register of Deeds of said county and state, do hereby certify that I have compared the foregoing paper writing with with the original record now remaining in this office, and that the same is a correct transcript therefrom and of the whole of said original record as the same appears in Book M. of transcribed records from St. Louis Co., page 648.

In witness whereof, I have hereunto subscribed my name and affixed my official seal at the Court House in said county this eleventh day of April, A. D. 1899.

CHARLES M. FLOATHE,
Register of Deeds.

By.....Deputy. 523

(Seal.)

(Ten cent revenue stamp cancelled.)

STATE O FMINNESOTA, COUNTY OF LAKE.
—ss.

I, J. D. Ensign, presiding Judge of the District Court for the Eleventh Judicial District, in 524
and for the County of Lake, State of Minnesota, which is a court of record hereby certify that Charles M. Floathe, whose name is subscribed to the foregoing certificate of attestation, is and was at the time of making the same, the Register of Deeds in and for the County of Lake in said State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit; that I verily believe his signature to the said certificate to be genuine, and that said certi- 525
ficate is in due form and by the proper officer.

Witness my hand at the City of Duluth, in the County of St. Louis and State of Minnesota, this 1st day of April, A. D. 1899.

J. D. ENSIGN,
Presiding Judge.

(Ten cent revenue stamp cancelled.)

STATE OF MINNESOTA, COUNTY OF LAKE.
—ss.

I, J. G. Miller, Clerk of District Court, Eleventh Judicial District, which is a court of record in and for the County of Lake and State of Minnesota, hereby certify that the Honorable J. D. En-
526 sign, whose name is subscribed to the foregoing certificate of attestation, is, and was at the time of making the same, presiding judge of the said District Court, of the Eleventh Judicial District, State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit, that I am well acquainted with the handwriting of said judge, and verily believe his signature to said certificate to be genuine.

Witness my hand and seal of said District
527 Court, this 13th day of April, A. D. 1899.

J. G. MILLER,
Clerk.

(Seal.)

(Ten cent revenue stamp cancelled.)

COPY OF EX. D.

No. 13217,

Filed for record on the 2nd day of Dec., A. D. 1899, at 12 o'clock M.
528 A. M. MILLER AND WIFE,

to

GERMANIA IRON CO.

This indenture, made this 11th day of June, in the year of our Lord one thousand eight hundred and eighty-nine, between Andreas M. Miller and Annie E. Miller, his wife, of Duluth, Minnesota, parties of the first part, and the Germania Iron Company, a corporation, under the laws of

the State of Minnesota, party of the second part;

Witnesseth, that the said parties of the first part, in consideration of the sum of fifty thousand ($50,000.00) dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, release and quit claim to the said party of the second part, its successors and assigns, forever, all the following pieces or parcels of land lying and being in the County of St. Louis and Lake and State of Minnesota, described as follows, to-wit: 529

The northwest quarter of the southeast quarter (N. W. 1-4 of S. E. 1-4) the southeast quarter of the northwest quarter (S. E. 1-4 of N. W. 1-4) lots six (6) and seven (7). The northeast quarter of the southwest quarter (N. E. 1-4 of S. W. 1-4). 530 The southwest quarter of the northeast quarter (S. W. 1-4 of N. E. 1-4) and lots one (1) and two (2) all in section thirty (30) in township sixty-three (63) north of range eleven (11) west.

To have and to hold the above quit claimed premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, its successors and assigns, forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. 531

ANDREAS M. MILLER,(Seal.)
ANNIE E. MILLER, (Seal.)

Signed, sealed and delivered
in presence of
A. H. CRASSWELLER.
HENRY A. WARE.

STATE OF MINNESOTA, COUNTY OF ST. Louis. —ss.

On this 11th day of June, A. D. 1889, before me, a notary public within and for the said county, personally appeared Andreas M. Miller and Annie E. Miller, his wife, to me personally known
532 to be the same persons described in and who executed the foregoing deed, and they severally acknowledged that they executed the same as their free act and deed.

A. H. CRASSWELLER,
Notary Public, St. Louis Co., Minn.

(Notarial Seal St. Louis Co., Minn.)

533

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I, Peter J. Borgstrom, Register of Deeds of said county, do hereby certify that the foregoing instrument, commencing on page 765 of this record is a true and correct copy of the records in my office as found in Book 34 of Deeds on page 592 That I have compared such copy with the original
534 record and that it is a correct transcript therefrom.

Dated this 20th day of Dec., 1895.

P. J. BORGSTROM,,
Register of Deeds.

(Register of Deeds,)
(Seal.)
(St. Louis Co., Minn.)

OFFICE OF REGISTER OF DEEDS, LAKE County, Minnesota.

I, Charles M. Floathe, Register of Deeds of said county and state, do hereby certify that I have compared the foregoing paper writing with the original record now remaining in this office, and that the same is a correct transcript 535
therefrom and of the whole of said original record as the same appears in Book M of transcribed records from St. Louis Co., page 765.

In witness whereof, I have hereunto subscribed my name and affixed my official seal at the Court House in said county this 11th day of April, A. D. 1899.

CHARLES M. FLOATHE,
Register of Deeds.

By.....Deputy. 536

(Seal.)

(Ten cent revenue stamp cancelled.)

STATE O FMINNESOTA, COUNTY OF LAKE. —ss.

I, J. D. Ensign, presiding Judge of the District Court for the Eleventh Judicial District, in and for the County of Lake, State of Minnesota, which is a court of record hereby certify that 537
Charles M. Floathe, whose name is subscribed to the foregoing certificate of attestation, is and was at the time of making the same, the Register of Deeds in and for the County of Lake in said State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit; that I verily believe his signature to the said certificate to be genuine, and that said certificate is in due form and by the proper officer.

Witness my hand at the City of Duluth, in the County of St. Louis and State of Minnesota, this 1st day of April, A. D. 1899.

J. D. ENSIGN,
Presiding Judge.

(Ten cent revenue stamp cancelled.)

538

STATE OF MINNESOTA, COUNTY OF LAKE. —ss.

I, J. G. Miller, Clerk of District Court, Eleventh Judicial District, which is a court of record in and for the County of Lake and State of Minnesota, hereby certify that the Honorable J. D. Ensign, whose name is subscribed to the foregoing
539 certificate of attestation, is, and was at the time of making the same, presiding judge of said District Court, for the Eleventh Judicial District, State of Minnesota, duly elected and qualified, and that his official acts are entitled to full faith and credit, that I am well acquainted with the handwriting of said judge, and verily believe his signature to said certificate to be genuine.

Witness my hand and seal of said District Court, this 13th day of April, A. D. 1899.

540 J. G. MILLER,
Clerk.

(Seal.)

(Ten cent revenue stamp cancelled.)

(This Exhibit being a copy of Exhibit A. annexed to the Findings, is not printed in the return.)

COPY OF EXHIBIT B.

"H" H. W. S.

M. C. S. (Ten cent revenue

Doc. 1, Case 681. stamp.)

DEPARTMENT OF THE INTERIOR, 541

GENERAL LAND OFFICE,

Washington, D. C.,

April 19, 1899.

I, Binger Herman, Commissioner of the General Land Office do hereby certify that the annexed copies of the testimony of F. W. Eaton and Edward Byrne, and of Exhibits "F," "G," "C" and "H," mentioned in said testimony in the case 542
of Thomas W. Hyde et al. v. F. W. Eaton et al., Duluth Land District, Minnesota, are true and literal exemplifications of the originals now in this office, showing erasures and interlineations as appear in the originals, except that in Exhibit "F," in lines 1, 6, 25 and 31 of the original certificate of location (being lines 1, 6, 23 and 29 of the copy) and in lines 1, 5, 25 and 31 of the original certificate of adjusted location (being lines 1, 5, 22 and 28 of the copy) and in the briefing, where 543
the letter "D" is written, there appear traces of knife erasures in the originals; also in Exhibit "G," in lines 1 and 26 of the original certificate of location (being lines 1 and 24 of the copy), and in lines 1 and 22, of the original certificate of adjusted location (being lines 1 and 20 of the copy) and in the briefing, where the letter "E" is written, there appear traces of knife erasures in the originals.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMAN,

Commissioner of the General Land Office.

544 (United States General
Land Office.)

TESTIMONY ON PART OF DEFENSE.

Frank W. Eaton duly sworn says:

545

I am one of the parties defendant in this case —I know the description and location of the land in contest.

I had something to do with the improvements on said land. I was the duly appointed attorney in fact for Orillie Moreau-Stram—and authorized the making of the improvements for the purpose of locating the scrip in question, under the rules of the Land Department.

546

"Witness here shown the files in S. H. B. Scrip 19 D. and identified the scrip certificate and power to locate as the authority under which he proceeded in having the improvements made upon the land preparatory to locating the same. Also identified his own affidavit of the fact of the improvements having been made. Files offered in evidence and marked Exhibit "F" and filed.

Witness then shown the files in Scrip No. 19 E. and made a like identification. Files offered in evidence marked Exhibit "G" and filed.

In having these improvements made upon the land in question I had no other purpose in view but the location of the scrip by virtue of the power of attorney.

547

I made the improvements in good faith solely in pursuance of the powers of attorney for the purpose of securing the location of the scrip in proper form and manner.

At the time I caused the improvements to be made the land was unsurveyed and I had no knowledge of it except that it was vacant unoccupied and unclaimed land by any other person.

548

I employed Edward Byrne to go and make the improvements upon the land in the first and I subsequently employed Richard Fagan also to go up there.

I agreed with Edward Byrne that in consideration of the land proving valuable as he represented to me and in consideration of his erecting or causing to be erected or made for me valuable improvements on two locations of 160 acres each, that I would pay his expenses necessarily incurred in doing the work, that I would locate the scrip upon the land and as soon thereafter as the location was completed I would cause to be conveyed to him an undivided one-third interest in the land.

549

To the best of my knowledge Mr. Byrne fulfilled his part of the agreement. I also fulfilled mine.

At the time I made the contract with Byrne I knew nothing about James Power or Joseph Clement. I don't think Thomas Ross did anything. I am informed that he went up on the land but do not know what he did.

I was present when Byrne, Power and Clement returned from the land and saw them at the
550 office of Chas. R. Haines (Mendenhall & Haines.)

Witness here shown Exhibit "C" and identified it.

I was present when that affidavit was made. It was read over to Mr. Power. The subject matter of it was talked over with him and the whole affidavit was dictated by me in Mr. Power's presence. It was made after the deed was executed,
551 conveying Byrne, Power and Clement 1-3 interest in the land.

The circumstances under which the affidavit was made and dictated are as follows: I did not know at that time how much proof was necessary to establish the fact that I had caused improvements to be made on the land, and I thought it necessary that Byrne, Power and Clement should furnish additional proof and for that reason I had this affidavit executed by them to furnish
552 the Department in case more evidence was required.

At the time this affidavit was made Mr. Power was sober and fully understood the contents of it. It was read over to him and explained to him thoroughly.

I have papers from Mrs. Stram confirming all my acts as her attorney and also the acts of Leonidas Merritt.

Witness here produced the papers alluded to. Offered in evidence by defendant.

Marked Exhibit H and filed.

Edward Byrne was the explorer who first discovered the land, and he came to me and told me of them.

553

CROSS EXAMINATION.

I was never on those lands.

I first saw Orillie Stram March 31st, 1886. I first saw the scrip papers in Duluth, Minn., sometime in the last of May or first of June, 1883, soon after the powers were executed. They were sent here to me and I never had seen them before. I think they were sent by mail. I got them from Byron M. Smith, Minneapolis, Minn. 554

Q. Then you located these pieces of scrip for the purpose through them of obtaining title to the land they should cover yourself? A. My intention was to have an interest in it. I did not expect to have the whole.

Q. Who also did you expect to have an interest? A. Mr. Merritt, Mr. Fagan and Mr. Byrne that is all.

Q. You did not expect Mrs. Stram to have any interest in it then? A. No I did not expect her to have any interest in the land, although she might. 555

Q. You considered them did you not, that by purchasing the scrip you would obtain all the title to the lands to be located under it, and that the scripee named in the scrip would have no interest in the lands and you made the arrangements for the improvements under that supposi-

tion, did you not? A. Objected to together with all this evidence relative to title for the reason that the scrip patent is issued to the scripee. That Frank W. Eaton was only empowered to locate the same and that by the location of the scrip the title became vested in the scripee and it is wholly
556 immaterial what Mr. Eaton may have expected with regard to purchase of the lands as that was a subsequent consideration and no title could pass in any event without the execution of a deed by Orillie Stram or her duly authorized attorney in fact. Defendant also moves to strike out all the testimony as to what Eaton's intentions were as to what interest he and others expected to get in the property.

Question by the Register:

557 Q. Did you not know at this time that Mr. Merritt was empowered by letters of attorney to sell and convert the land and were you not acting with him jointly in the premises.

A. Yes. Mr. Merritt was a business partner of mine at the time.

Answer to question previous to last.

I made the improvements under the supposi-
558 tion that when she conveyed to me her scrip and a power of attorney to locate the same for a valuable consideration and the farther contract on her part for a valuable consideration to fully confirm all my acts and also the acts of Leonidas Merritt her attorney in fact for the purpose of conveying the lands located under and by virtue of said half-breed scrip that all her rights as to any land as far as she was concerned was thereby transferred.

Q. Transferred to whom? A. To whoever her attorney in fact might desire.

Q. You had all these papers that you mentioned in next to your last answer, and Eaton & Merritt had paid the full consideration therefor, before the 16th day of June, 1883? A. No sir.

Q. What of those papers did you not have? 559
A. We had the power to locate and convey prior to that time, but had not fully paid for them.

Q. Who did you pay? A. I made the first payment to Byron M. Smith, and paid the balance to Orillie Stram March 31, 1886. I made no payment to her until then. I had agreed to pay her previous to that time. I made the agreement at the time the powers were obtained by Byron M. Smith.

560

Q. Did you know at the time this land was conveyed by Merritt (Mrs. Stram's attorney) that Smith had made any such arrangement on her behalf?

A. I have already answered the question in answer to the last question before this.

Q. Did you make that arrangement yourself with Mrs. Stram at the time the powers of attorney were given or did somebody else act for you in 561
making that arrangement?

(Objected to as immaterial.)

A. Byron M. Smith was acting for me supposing that he had full authority. He acted for me and for her. He held her scrip and got new powers of attorney and made the arrangements. I knew of this arrangement at the time we procured the scrip.

Q. That is then, your arrangement was with Smith that you should pay him a certain sum which you did pay for the scrip and a certain other sum which you paid finally March 31, 1886, to Orillie Stram?

(Objected to as incompetent.)

A. Yes.

562 Q. When was you to pay that sum to Mrs. Stram under the original arrangement? A. After the location was perfected and the scrip adjusted.

Q. Were the names filled in those powers of attorney when you received them or did you fill them in after you received them?

(Objected to as immaterial.)

A. They were filled in after I received them.

563 Q. Was the amount to be paid to Mrs. Stram under your arrangement with Smith dependent in any manner upon the value of the land obtained or was it a fixed amount?

(Objected to as immaterial.)

A. There was a fixed amount between Mr. Smith and myself.

Q. Was Mrs. Stram ever on the land or not—to your knowledge?

564 (Objected to as incompetent.)

A. I don't know anything about it.

Q. Mr. Eaton, will you explain why you made oath in this affidavit that has been offered here that you had as attorney built upon each of said pieces of land a dwelling house 14x16 feet 1 story high built of timber and covered with split shingles with door and windows and had cleared ready for cultivation 1-2 acre of said land and that

said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit when according to your own testimony you never had seen Orillie Stram and never had been on those lands? A. Because it was true to the best of my information.

Q. You did not make these affidavits on in- 565
formation and belief did you? A. Only that portion relative to the improvements on information and belief, as to the other I was acting as the authorized attorney of Stram under a power of attorney and my acts were her acts, and you can not separate the attorney and principal. And the improvements were made by Mr. Byrne and Mr. Fagan directly in my employ and the improvements were such as Mr. Fagan reported to me which statement of his I then (corrected on 566
reading.) believe to be true. I had only such knowledge in relation to improvements as I have stated.

The men came down from the woods the same day as the deeds to Byrne, Clement and Power were executed.

Q. That is July 2, 1883, if the date in the deed is correct? A. Yes.

Q. How long would it take parties to come 567
down? A. From 3 days to two weeks according to weather and other circumstances. I don't know how long it took them.

Q. Had Fagan been to those lands for you more than once before they all came down? A. That was his second trip when they all came down.

Q. Did you have this scrip when you first made arrangements with Byrne to scrip these

lands? A. I did not have the scrip at that time.

Q. At what time did you make the arrangement with Byrne? A. Sometime the last of May, 1883, we first talked about it. I made a definite arrangement as far as he was concerned at that
568 time. He went up to the lands the next day I think.

Q. Both the powers, to you and Merritt were received by you in blank were they? A. They were.

RE-DIRECT.

Q. Was Power sworn to the affidavit, Exhibit "C," in your presence? A. Yes, he was
569 DULY SWORN.

The power to locate was filled out by Luther Mendenhall, and in the power to convey Mr. Merritt's name was filled in by Byron M. Smith a few days after I received it.

CROSS EXAMINED.

Power was sworn with his hand uplifted sim-
570 ultaneously with Byrne and Clement. I know this by seeing him and the act. Power was in the office all the time during the time the affidavit was being prepared.

Question by Register:

Q. How long a time were you all in Mendenhall & Haines office that day? A. I should say about two hours.

FRANK W. EATON.

Subscribed and sworn to before me
this 14th day of April, 1886.

R. N. MARBLE,
Register.

571

April 15th, 1886.

Edward Byrne being duly sworn, says I am 40 years of age and reside in Duluth, Minn. Have lived here about six and one-half years.

I am an explorer. I know the property that is in controversy in this case. I discovered the property myself.

I know Frank W. Eaton of Duluth, Minn. 572
Have known him about 6 years. I made improvements upon the land in dispute.

I built one house 14x16 feet with a floor and roof, door and window, bunk and table, and another house similar in size to the first house nearly the same as the first except that it had no window although a space was cut out for one. I also cleared 1-2 an acre of land.

I heard the testimony of Hyde and McDonald. 573
They were mistaken as to there being but half a roof on the shanty, at least as they stood when I left them after building them. There might, however, have been a half roof when they went there a year or so after they were built. The house as I left it WAS inhabitable, considering the time of the year there was no stove in it and none was required, that is there was no fire place or chimney as none was required at that time a year.

Heating in that part of the country is done with fire places.

There WAS a door hung in the door way of the shanty with leather straps when I left. Doors and windows of shanties are commonly stolen in that country by settlers to use on their own shanties when they find owners of property absent.

574 I made those improvements under the direction and instruction of Frank W. Eaton.

I made no improvements there in my own behalf. I did not nor did any one with me make any improvements for the purpose of claiming the land ourselves under the homestead or pre-emption law.

Q. Power says that you and he put homestead notices on the buildings. If you did
575 so you may explain why it was done and what was the object. A. We went up to hold this land and make good improvements according to Mr. Eaton's directions, and had to put notices at different places on the land in order to prevent other explorers from squatting or making improvements on the land. Mr. Power understood this and why it was done just as well as I did. Mr. Power was in my employ at the time.

I remember of writing on the shanty "im-
576 provements" but do not remember of writing "homestead" because we never intended to take a homestead.

Witness here shown the stake which was introduced in evidence by the plaintiff and testifies that he does not recognize any of his own writing thereon. I don't know whether that stake came from the land or not. I do not recognize the writing on the stake as my own. I had the ar-

rangement with Mr. Eaton before the improvements were made. The arrangement was made in Eaton's office in Duluth before we went up to the land.

The understanding was that I should receive a 1-3 interest in the land, $50 in cash, all provisions and tools necessary to make and complete 577
the improvements. Mr. Eaton furnished the money as agreed, also tools and provisions.

After making the arrangements with Eaton I made one with James H. Powers.

I intended to employ Warren Miller of Ontonogon, Mich., and make the contract with him but he could not be got at the time and so I took Jas. H. Powers.

I made the arrangements in Welsh's saloon 578
with Power before we left Duluth to go to the land. I told him I was promised a 1-3 interest in these lands from Eaton for going to make the improvements, and to get that 1-3 interest we would have to go on the land, stay some time and make improvements and when everything was settled I would divide the third with him and Clements, who was my partner, when we made the discovery that the land was valuable.

He agreed to the arrangement and went with 579
me and assisted in making the improvements under that agreement. I furnished him $20 to buy his outfit with to go there.

Before starting I took him to Eaton and Merritt's office and introduced him to Leonidas Merritt. We inquired for Mr. Eaton but could not find him. I was present when Power talked to Mr. Merritt, Mr. Eaton's partner.

Q. Did he not state to Mr. Merritt in your presence that he understood from you that you were to receive 1-3 interest in the land and that you had agreed to divide that 1-3 with him and Clement?

Objected to as leading and suggesting the
580 answer to the witness.

A. He did.

Mr. Richard Fagan came upon the land while Power, Clement and I were making the improvements. He came there twice. The first time he came he stated what he came for. He said he came to get the description of the land and assist in making improvements. He stated that Mr. F. W. Eaton sent him and he brought a letter from Eaton at the same time. The letter was
581 addressed to me, Edward Byrne. Mr. Fagan worked about two days.

It would take one man two days to cut the logs alone for each shanty to build the shanty with, and one man could by no means handle the logs in erecting the shanties. The shanties were from 7 to 9 feet high. When Mr. Fagan came the second time Mr. Merritt came with him and I had no conversation with Fagan.

582

We all left the land and came down to Duluth together, there were Mr. Merritt, Mr. Fagan, Power, Clement and an Indian or two and myself. The Indians were packers.

The improvements were all complete when we left there. I did not take Power out one side just before leaving the land and tell him what he was to get, and that was not the first time he knew what he was to get. He finally understood

the whole matter before we left Duluth in the first place. The first place we went to after returning to Duluth was Friedenburg's restaurant (called the parlor saloon) and got our dinner. We then proceeded directly to the office of Mendenhall & Haines. Power, Clement, Merritt, Eaton, Fagan and myself went there together, and we all got our matters fixed up and the papers made out be- 583
fore we left there. I don't know whether Power was there all the time or not.

Mr. Power was sober during all the time we was there engaged in making out the papers.

Witness here shown Exhibit "C" and said that he recollected Mr. Haines reading an affidavit containing statements like the one contained in this. I signed this Exhibit "C" and identify my signature. The paper I refer to as having been 584
read over by Mr. Haines, was made out by him and dictated by Mr. Eaton and was sworn to by Jas. H. Power, Edward Byrne (myself) and Jos. Clement.

Q. Examine Exhibit "C" and state whether the contents of it are true or not? A. They are true.

I believe Mr. Power fully understood the import of Exhibit "C" before he signed it.

585

I and the other parties all received our pay from Mr. Eaton according to the agreement made before going up there to make improvements.

CROSS EXAMINED.

Mr. Eaton was never on those lands to my knowledge.

Mr. Eaton directed us to go and make good substantial improvements, in the same style as are made by pre-emptors and homesteaders in this country. He did not state specifically how much to clear, but gave a general direction. I don't know whether Orillie Stram was on the land or not. I never saw any half-breed woman there.
586 I did not know or had not heard of any such woman at that time. The first time I ever heard Mrs. Stram's name mentioned was in Haines' office when we made the affidavit.

When I made the arrangements with Mr. Eaton I understood that he had the scrip under his control. Either had it in his possession or had made arrangements for it.

I had discovered the land about three weeks
587 before going up to make improvements. Clement was with me when I found it. I was then at work for the Minnesota Iron Company. Clement and I were what were called mineral explorers at that time, and had been in the employ of the company eighteen months at that time.

RE-DIRECT.

I run the biggest part of all the lines about this land. I run the line through the center of the
588 section east and west. I run a true line east from the 1-4 post on the west side of section 30, run it east 1-2 mile. I did it in order to locate the land and find out where to place the improvements. This was before the survey of the interior of the township.

I used a "Gurley's dial compass." I tested the accuracy of this line by re-tracing the range line for a half mile between sections 11 and 12. I found

the compass correct, and that my line was correct east and west, and a right angle line with the range line. The improvements were made north of this east and west line that I ran. They were two hundred paces north of the line.

I know something about McPherson who made a subsequent survey. I do not consider him 589
a competent surveyor, or any surveyor at all. I have worked under him on surveys.

Q. What do you know about his making surveys which were inaccurate before.

Objected to as irrevelant and immaterial.

A. I don't recollect any.

I consider the survey I made accurate and made the improvement acting under that survey in good faith and believe they are on the land. 590

RE-CROSS.

The land in question shows signs of iron, and was the reason that I considered it valuable.

I will not say positively that I did not write "Homestead" on my shanty or on the stakes.

Q. Do you say that you did not write that on this stake in evidence? A. I can not swear to 591
anything about that stake.

Q. Now I want an answer distinct to this question "Do you swear that you did not write this writing that appears on the stake heretofore introduced in evidence?" A. No.

Q. Give me your opinion whether it is your hand writing or not? A. I believe it is my hand writing.

Q. Particularly examine the word "Homestead" and say if that is your writing? A. I can't say, but I think it is all my writing.

Q. Why was it not just as easy for you to write the name of the scripee for whom that land was being taken upon those improvements and stakes
592 as to write your own name and Power.

Questions by Register.

Q. For what purpose did you put those stakes there with your names? A. To keep other explorers and claimants off under our orders from Eaton and mislead and keep others off the land.

Preceding question objected to as frivolous.

Objection sustained on the ground that witness has already testified that at that time he had
593 no knowledge of the name of the scripee and that words written were written for the purpose of misleading others who might wish to squat on the land.

Plaintiff's attorney excepts to the ruling on the ground that it is arbitrary and not within the power of the Register and Receiver under the rules promulgated by the General Land Office for their government.

594 Q. You understood at the time you were making these marks that you were making this improvements under Sioux half-breed scrip did you? A. Yes.

Q. Who did you understand owned this scrip? A. Frank W. Eaton.

Q. Why did you not mark the stakes and improvements on the lands with Frank W. Eaton's name.

Same objection and same ruling as in the foregoing question. Same exception to plaintiff's attorney.

Q. You thought then did you that it would better serve your purpose to mark those improvements falsely than truly?

Same objection, ruling and exception.

Answer to question by Register. 595

I was aware that the lands were valuable four years before the improvements were made but had not made a careful examination of them until about three weeks before making the arrangements with Mr. Eaton.

Q. Did you mark these lands as you did to mislead any person who might have an interest in the land by settlement or otherwise or did you as being the first party who made improvements 596 thereon mark them to mislead and keep others off and thus protect the interests of Mr. Eaton who employed you? A. I marked them to protect Mr. Eaton's interests and keep others off as I was the first party to make improvements and I thereafter walked about the lines for days with a revolver to protect Eaton's interests and keep others off.

Q. Was Lonstorf there while you were there? A. Yes. Mr. Hartman was there also. The latter was there 10 or 12 days before Fagan & Merritt 597 came. It was before Fagan came the first time. I had no talk with Hartman that I recollect of about selling to him, although I will not say that I did not have any such talk. I heard Mr. Hartman's testimony.

Q. Did you not tell him as he said that if parties were not there that day whom you expected you would treat with him for sale, or words to that

effect? A. I had nothing to sell. I don't remember telling him so. I don't remember whether I told him so or not.

A. I will not say whether I did or did not tell him so.

A. I can't say how many days I was there
598 before Fagan came the first time but I think about 15 days.

A. About the same length of time afterwards we came down.

A. We were about 6 days coming down.

A. We left here to go up there about the middle of May, 1883.

A. We were about 6 days going up.

A. We were on the land not quite a month
599 I think.

A. The improvements were not completed when Fagan left there the first time.

A. My shanty was completed but Powers' was not.

A. Powers' was completed afterwards.

A. The door was hung on the inside and it fit as near as they generally fit in the woods.

600 A. There was a jam in the door way.

A. The roof part that was covered with shakes was a portion on each end, say a foot or 18 inches.

A. The shanties were chinked but not mossed.

A. I do not know whether Power drank any after he came in town that day at the Friedenburg's restaurant (Parlor Saloon) or not.

A. I don't know whether he and Clement went across the street from Mendenhall & Haines office and got some drinks or not.

A. We were all three sworn to the affidavit in the same way at the same time and by the same officer.

Q. How was that done? A. As near as I 601
can recollect the affidavit was read over by Mr. Haines who asked if we understood it we held up our right hands, swore to it and signed our names then he went to the desk and put his stamp on it.

A. I saw Power hold up his right hand.

A. By window I mean a hole cut in between the logs we had no glass window.

A. The contents of the letter from Eaton which I spoke of were to the 602
effect that he had been disappointed in getting the description of the claims from the man he had sent up there before, and sent Mr. Fagan up to get another description and assist us with the work. That was the substance of it.

Q. What was your idea in getting Power to go with you to improve this land if you already had Clement as a partner. Why did you and 603
Clement not do it without taking a third man? A. Because Clement had a preemption filing in 62 R. 16 at that time, and was well acquainted in the country.

Q. How did that make any difference with his assisting you along without Power's help in making these improvements on the land that you were improving so that Eaton might get them with Sioux scrip? A. Because the parties, the

parties that I was suspicious of would take advantage of the knowledge they had of Clement having a preemption and go on the land in opposition to him sooner than they would against a man who had no filing.

Q. Did not Power have a pre-emption claim
604 too? A. I was not aware that he had at the time I employed him in Duluth.

Q. Do you pretend to say that the fact that a man had taken a pre-emption claim would thereafter prevent him taking a homestead and that was the reason why Clement could not go on this land and make improvements with you?

(Objected to for the reason that witness has not testified to anything of the kind included in
605 the question but has explained his very reasons.)

A. I cannot answer the question.

RE-DIRECT.

When Fagan left for Duluth the first time the improvements were all completed except hanging the door and cutting a window. After he came there he assisted in completing them up to that point.

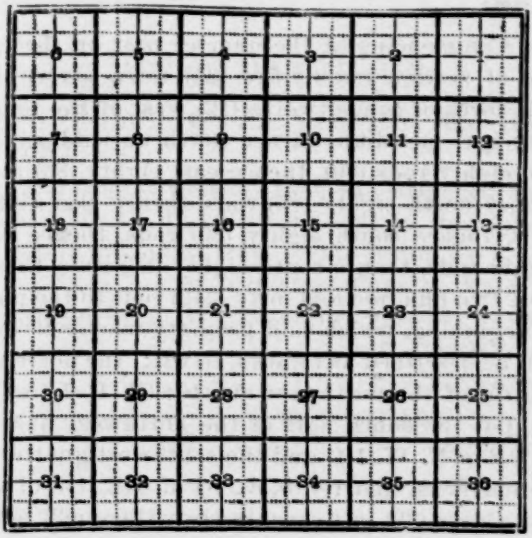
A. Speaking of Hartman and what I told
606 him I will say that many people came there making propositions to me and I had to tell them anything I could devise to get rid of them and get them to leave me alone.

EDWARD BYRNE.

Subscribed and sworn to before me
this 15th day of April, 1886.

R. N. MARBLE,
Register.

Township 63, Range No. 11 W., 4th P. Mer.



607

608

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. Land Office,
Duluth, Minn.

609

In the matter of the application of Orillie Stram, formerly Orillie Moreau to locate Sioux half-breed scrip No. 19 Letter D., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath says that he is the attorney in fact of said Orillie Stram and is duly authorized by her to locate the scrip above described, and that he has so located the same as such attorney in fact on

the following described unsurveyed real estate within the limits of the Duluth Land District, to-wit:

Commencing at the quarter post on the east line of section twenty-five (25) town sixty-three (63) north of range twelve (12) west of the fourth
610 principal meridian, thence north on said section line eighty rods (80), thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty rods, thence south eighty (80) rods, thence east eighty rods, thence south eighty (80) rods, thence west two hundred and forty (240) rods to the place of beginning, which said property when surveyed will be described as follows, to-wit: the northeast quarter of the northwest quarter (N. E. 1-4 of N. W. 1-4) the south half of the northwest quarter
611 (S. 1-2 of N. W. 1-4) and the southwest quarter of the northeast quarter (S.W. 1-4 of N.E. 1-4) of section thirty (30) in township sixty-three (63) north of range eleven (11) west of the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and has cleared ready for cultivation one-half acre of said land.

612 That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CAREY,
Register.

Scrip Certificate No. 19 D., Register and Receiver's No..... Sioux half-breed reserve at Lake Pepin.

ACT OF JULY 17, 1854.

LAND OFFICE, Duluth, Minnesota, June 16th, 1883. 613

We hereby certify, that the attached half-breed scrip No. 19 Letter D.—was on this day received at this office from Orillie Stram by .... of Crawford County, State of Wisconsin by F. W. Eaton, her attorney in fact.

J. R. CASEY,
Register.

W. W. SPALDING,
Receiver. 614

I, Orillie Stram, formerly Orillie Moreau of Crawford County, State of Wisconsin, hereby apply to locate and do locate, the following unsurveyed tract of land, designated as follows, to-wit: Commencing at the quarter post at the east line of section twenty-five (25) town sixty-three (63) north of range twelve (12) west of the fourth principal 615 meridian, thence north on said section line eighty rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence south eighty rods, thence east eighty rods, thence south eighty rods, thence west two hundred and forty rods to the place of beginning, containing one hundred sixty— acres, in the District of Lands, subject to sale at the Land Office at Duluth, Minn., in satis-

faction of the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILLIE STRAM, by (Seal)
Attest: F. W. EATON,
616 Her Attorney in Fact.

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

We hereby certify, that the annexed Scrip No. 19 Letter D., has this day been located on the unsurveyed tract of land, as described within,
617 containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

J. R. CASEY,
Register.
W. W. SPALDING,
Receiver.

618

(Indorsed on back.)

LAND OFFICE, Duluth, Minn..
June 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the tenth 10th day of June, 1883, and that there was no person living on the same at that

time, nor were there any improvements on it, except those of Orilie Stram.....nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.

J. R. CASEY,
Register. 619

Scrip certificate No. 19 D., Register and Receiver's No. 188.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

LAND OFFICE, July 21st, 1885. 620

We hereby certify, that the attached half-breed scrip, No. 19 D., Letter D., was on this day adjusted by Orilie Stram formerly Orilie Moreau, of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

621

I, Orilie Stram, formerly Orilie Moreau of Crawford County, State of Wisconsin, hereby apply to locate and do locate the tract of land, designated as follows, to-wit: Lots number three (3), five (5) and six (6) and southeast quarter of northwest quarter of section thirty (30) in township number sixty-

three (63) north of range eleven (11) west of 4th principal meridian (the above location is hereby made to adjust to the U. S. survey, the location made June 16th, 1883, upon unsurveyed lands of half-breed scrip No. 19 Letter D., issued under the Act of Congress July 17th, 1854, containing one hundred sixty-one and 67-100 acres in the Dis-
622 trict of Land subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, (Seal.)
By F. W. EATON,
Her Attorney in Fact.

Attest:
623 N. B. THAYER.

Canceled by Dept. decision of Feby. 18, 1889, affirming ours of March 7, 1887. See to R. & R., Feby. 19, 1889. E. S. E.

LAND OFFICE,
July 21st, Duluth, 1885.

We hereby certify that the annexed scrip No. 19 Letter D., has been this day adjusted on the
624 tract of land, as described within, containing 161 61-100 acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

Excess receipt No. 7.762 for 1.61-100 acres at $1.25 per acre $2.00.

(Indorsed on back.)

Land Office 187

See to James A. George, April 18, 1895.

Being duly sworn says: I am acquainted with the tract

33332 625

See to James A. George, April 30, 1895.

A. M. H.

of land described within, by personal examination of the same

See to R. & R., May 18, 1895.

on the day of 187 and that there was no per-

telegram Div. "A." H. 626

A. M. H.

son living on the same at that time, nor were there any im-

See to Geo. J. Lornstorf, May 6 and 8, 1895.

A. M. H.

provements on it except those of

See to R. & R., Aug. 2, 1895, enclosing scrip.

nor any person claiming said tract. 627

See to Burdette, Thompson & Low, Aug. 5, 1895.

A. M. H.

Sworn and subscribed before me this day 187

See to James A. George, Aug. 5, 1895.

A. M. H.

Register.

"C" to Secretary, Sept. 17, 1895.

EXHIBIT F.

Filed April 14, 1886. R. & R. No. 187.

U. S. Land Office, Duluth, Minn., July 21st, 1885.

"C" to Hon. Edward Stringer.

628

Feby. 19, 1896, as to delivery of this scrip.

Sioux half-breed scrip, Certificate 19 D. Register No. 188, located by F. W. Eaton, attorney in fact for Orilie Moreau, Sec. 30, Tp. 63, N. R. 629 11 W.

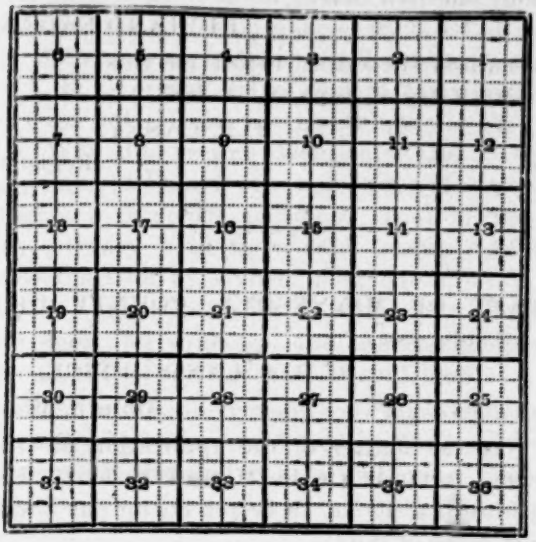
Noted on scrip record. Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of Mch. 7-87. See to R. & R., Feby. 19, 1889, E. S. E. Div. H. Posted on Tract Book Sept. 9-1885.

630

Cancellation noted June 4-89, M. P. W. See to R. & R., April 17-1895. A. M. H.

(Over.)

Township No. 63, Range No. 11 W., 4th P. M.



631

632

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

In the matter of the application of Orillie Stram to locate Sioux half-breed scrip No. 19 Letter E., for 160 acres of unsurveyed land. 633

Richard Fagan being first duly sworn on his oath says that he is acquainted with Frank W. Eaton and with the land described above, that he has been upon said land and knows the character of the improvements thereon, that such improvements consist of a one-story dwelling house, fourteen by sixteen feet, with door and windows, and

shingle roof, that there is cleared on said land about one half acre.

RICHARD FAGAN,

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,

Register.

634

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. LAND OFFICE,

Duluth, Minn.

In the matter of the application of Orillie
635 Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19 Letter E., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath says, that he is the attorney in fact of said Orillie Stram, and is duly authorized to locate for her the scrip above described, and that he has so located the same upon the following described unsurveyed land in the Duluth Land District, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three
636 (63) north of range twelve (12) west of the fourth principal meridian, thence east two hundred and forty rods (240) to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods; thence south eighty (80) rods, thence west eighty (80) rods, thence south eighty (80) rods to the place

of beginning, which said land when surveyed will be described as follows, to-wit: The southeast quarter of the northeast quarter (S. E. 1-4 of N. E. 1-4), the northeast quarter of the southeast quarter (N. E. 1-4 of S. E. 1-4) of section thirty (30), and the west half of the northwest quarter (W. 1-2 of N. W. 1-4) of section twenty-nine (29), in town sixty-three (63) north of range eleven (11) west of 637
the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and has cleared ready for cultivation one-half acre of said land.

That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by 638
authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,
Register.

639

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Richard Fagan, being duly sworn on his oath, says that he is acquainted with Frank W. Eaton, the affiant in the affidavit hereto attached; that he is acquainted with the land described in said

affidavit and has been on the said land, that he has read said affidavit and knows the contents thereof and knows of his own knowledge that the improvements therein described have been made as therein described and are now on the said land, and the statements in said affidavit, made in regard to said improvements are correct.

640

RICHARD FAGAN.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CASEY,
Register.

641

Scrip Certificate No. 19 E. Register and Receiver's No.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

642

We hereby certify, that the attached half-breed scrip No. 19 Letter E., was on this day received at this office from Orillie Stram ..... of Crawford County....., State of Wisconsin, by Frank W. Eaton, her attorney in fact.

J. R. CASEY,
Register.

W. W. SPALDING,
Receiver.

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate and do locate the unsurveyed tract of land, designated as follows, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of range twelve (12) west of the fourth principal meridian thence east two hundred forty rods to 643
the place of beginning of the land located, thence south eighty (80) rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence north one hundred sixty rods, thence west eighty rods, thence south eighty rods, thence west eighty rods, thence south eighty rods to the place of beginning, containing one hundred sixty (160) acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter E. issued 644
under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, by (Seal.)

Attest:

F. W. EATON,
Her Attorney in Fact.

645

LAND OFFICE,
Duluth, Minn.
June 16, 1883.

We hereby certify, that the annexed scrip No. 19 Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres agreeably

to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

J. R. CASEY,
Register.
W. W. SPALDING,
Receiver.

646

(Following indorsed on back.)

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

Richard Fagan being duly sworn, says I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the ninth (9), tenth (10) day of June, 1883, and that there was no person living on the
647 same at that time, nor were there any improvements on it except those of Orilie Stram nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.

J. R. CASEY,
Register.

Scrip Certificate No. 19 E. Register and Re-
648 ceiver's No. 187.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

ACT OF JULY 17, 1854.

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 D., Letter D., was on this day

adjusted at this office by Orillie Moreau of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

649

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin hereby apply to locate and do locate, the ..... tract of land, designated as follows, to-wit: Lots number one (1) and two (2) and southwest quarter of northeast quarter and northwest quarter of southeast quarter of section thirty (30) in township number sixty-three (63) north of range eleven (11) west of 4th principal meridian. 650

(The above location is hereby made to adjust to the U. S. survey, the location made June 16th, 1883, upon unsurveyed land of half-breed scrip No. 19 Letter E., issued under the Act of Congress July 17th, 1854,) containing one hundred and fifty-two acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter E., issued under the Act of Congress, July 17th, 1854. 651

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, by (Seal.)
F. W. EATON,
Her Attorney in Fact.

Attest:
N. B. THAYER.

Cancelled by Dept. decision of Feby 18, 1889, affirming office decision of March 7-87. See to R. & R., Feby. 19, 1889.

LAND OFFICE, Duluth, Minn.,

652 July 21st, 1885.

We hereby certify, that the annexed scrip No. 19 Letter E. has been this day located on the.... tract of land, as described within, containing.... 152....acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.

653 E. G. SWANSTROM,
Receiver.

(Indorsed on back.)

Land Office, 187
See to James A. George, April 18, 1895.
being duly sworn, says, I am acquainted with the tract of

654 33332
See to James A. George, April 30, 1895.
A. M. H.
land described within, by personal examination of the same on
See telegram Mar. 18, 1895, to R. & R., calling for report.
A. M. H.
the day of 187 and that there was no person liv-

See to Geo. L. Lonstorf, May 6 and 18, 1895.

A. M. H.

ing on the same at that time, nor were there any improvements

See to R. & R. Aug. 2, 1895, enclosing scrip.

A. M. H.

on it except those of nor any person 655 claiming said

See to Burdette, Thompson & Low, Aug. 5, 1895.

A. M. H.

tract.

See to James A. George, Aug 5, 1895.

A. M. H.

Sworn and subscribed before me this day of 187.

656

"C" to Secretary Sept. 17, 1895.

Register.

EXHIBIT G.

Filed April 14-86. R. & R. No. 188. "C" to R. & R. Dec. 30-95.

657

U. S. LAND OFFICE,

Duluth, Minn.

July 21, 1885.

"C" to Hon. E. C. Stringer as to delivery of this scrip Feby. 19-96. Sioux half-breed scrip certificate 19 E. Register's No. 187. Located by F. W. Eaton, attorney in fact for Orillie Moreau, Sec. 30, Tp. 63, N. R. 11 W.

Noted on scrip record H.
Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R., Feby. 19-89 E. S. E. Div. "H" Poste Pkn tract Book Sept. 9-85.

658

Cancellation noted June 4-89. J. M. R.
See to R. & R. April 17, 1895. W. P. W.
9230. A. M. H. 86-99065. (Over.)

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

659 Edward Byrne, James H. Powers and Joseph Clement of said county and state, being first duly sworn, make oath and say that they have made good and substantial improvements on the following described land, to-wit: In sections twenty-nine (29) and thirty (30) in township sixty-three (63) north of range eleven (11) west of the 4th principal meridian, located under and by virtue of Sioux half-breed scrip No. 19 E., Letter "E" for 160 acres, and by No. 19 Letter "D" Sioux scrip, issued to Orilie Stram (formerly Orilie Morian) for and under the personal direction of Frank W. Eaton, attorney in fact of said Orilie Stram and Roman Stram, her husband—and have made no improvements on said land either for themselves, or any other person, intending to claim the same under the Homestead or Pre-emption law, or for any purpose whatever, other than above described, and to our certain knowledge there is or has not

660

been any other improvements made on above described lands, by any other person or persons.

EDWARD BYRNE,
JAMES H. POWER,
JOSEPH CLEMENT.

Sworn to and subscribed before me this second day of July, A. D., 1883. 661

CHAS. R. HAINES,
Notary Public, St. Louis Co., Minn.

(Seal.)

This indenture made this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six between Orillie Stram (before marriage Orillie Moreau) and Roman Stram, her husband, of Crawford County and State of Wisconsin, parties of the first part, and Frank W. Eaton, of Duluth, St. Louis County, State of Minnesota, party of the second part. 662

Witnesseth that whereas the said Frank W. Eaton as our duly constituted and appointed attorney in fact did on the 16th day of June, A. D. 1883, cause to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip No. 19 D. and No. 19 E, each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton our attorney in fact as aforesaid, vesting the title to the said land as described in said application by metes and bounds in me the said Orilie Stram (the said description being by metes and bounds for the reason that the said land had not yet been surveyed by the United 663

States,) which said land has since been surveyed by the government and plat thereof

—2—

filed in the United States Land Office, at Duluth, Minnesota, and upon said plat the aforesaid scrip and entry was adjusted
664 July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me the said Orilie Stram by the said Frank W. Eaton and intended to be entered on June 16th, A.D. 1883, in the name of me, the said Orillie Stram, by our attorney in fact the said Frank W. Eaton and, Whereas, we, the said Orillie Stram and Roman Stram did on the 25th day of May, A. D. 1883, by two certain powers of attorney duly executed acknowledged and delivered by us to
665 Leonidas Merritt of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book "A" of Powers of Attorney on pages 613 and 614 therein and thereby constituting and appointing the said Leonidas Merritt the attorney in fact of the said Orillie Stram with full power and authority in her name and stead to grant, bargain, sell, demise, lease, convey and confirm the said
666 lands which we then owned or which we might thereafter acquire or become seized of under and

—3—

by virtue of locations of Sioux half-breed scrip No. 19 E. for 160 acres of land and No. 19 D. for 160 acres of land issued to me the said Orillie Stram and,

Whereas, the said Leonidas Merritt, as our attorney in fact on the 30th day of October, A. D.

1885, did by Warranty Deed duly executed by him convey to the said Frank W. Eaton an undivided seven-ninths part and interest in the said lands which according to the said survey and plat and in said deed are described as follows, to-wit: All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake in the State of Minnesota, described as follows, to-wit: 667
Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter all being in section thirty (30) in township No. sixty-three (63) north of range eleven (11), west of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and 61-100 (313.61) acres of land more or less, which said Warranty Deed was upon 668

—4—

the 3rd day of November, A. D. 1885, at 2 o'clock P. M. duly recorded in the office of the Register of Deeds for St. Louis County, Minnesota, in Book A. 3 of Deeds, page 350 and in the office of the Register of Deeds for the County of Lake in the State of Minnesota, on the 5th day of December, A. D. 1885, at 3 o'clock P. M. in Book D. of Deeds, page 669
205. Now, therefore, we the said Orillie Stram and Roman Stram, parties of the first part do hereby fully ratify and confirm the said conveyances of said land as above described to the said Frank W. Eaton by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact Leonidas Merritt under and by vir-

tue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney Leonidas Merritt and in consideration of the sum of one (1) dollar to us in hand paid by the said party of the second part the receipt whereof is hereby confessed and acknowledged

670

—5—

have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the second part, his heirs, and assigns forever, an undivided seven-ninths part and interest in the following described tracts or parcels of land situate in the Counties of St. Louis and Lake and State of Minnesota, known and described as follows,

671 to-wit:

Lots one (1), two (2), three (3), five (5) and six (6). The southwest quarter of the northeast quarter. The southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30), in township No. sixty-three (63) north of range No. eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and sixty-one hun-

672 dredths (313.61) acres more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, her heirs and assigns forever and the said parties of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever,

that they are well seized in fee of the said land and premises aforesaid, and have good right to sell and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the parties of the first part will warrant and defend. 673

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILIE STRAM, (Seal.)
Formerly Orilie Moreau.
ROMAN STRAM.

Signed and delivered in presence of 674

JAC. RAFFAUF.
ALEX. RAFFAUF.

STATE OF WISCONSIN, COUNTY OF CRAWFORD.

I, Jac. Raffauf, a notary public within and for said county, do hereby certify that on the 31 day of March, A. D. 1886, personally came 675

before me Orilie Stram formerly Orilie Moreau and Roman Stram, her husband, to me well known to be the same persons described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and vol-

untarily for the uses and purposes therein mentioned.

JAC. RAFFAUF,
(Seal.) Notary Public,
For Crawford Co., Wisconsin.

OFFICE OF REGISTER OF DEEDS.

676 STATE OF MINNESOTA, COUNTY OF LAKE.—ss.

I hereby certify that the within instrument was filed in this office for record on the 24th day of April, A. D. 1886, at 8 o'clock A. M., and was duly recorded in Book D. of Deed Records, page 264 and 265.

G. A. SCHULZE,
Register of Deeds.
By.....Deputy.

677

1648 "H" Warranty Deed and Confirmation. Orilie Stram and husband, to Frank W. Eaton.

OFFICE OF REGISTER OF DEEDS.

COUNTY OF SAINT LOUIS.—ss.

I hereby certify that the within deed was filed in this office for record on the 3rd day of April, A. D. 1886, at 9 o'clock A. M., and was duly recorded in Book 8 of Deeds, page 46.

678

FRANK BURKE, Jr.,
Register of Deeds.
By.....Deputy.

Not entered for taxation this.....day of .....A. D. 18...

.....
County Auditor.

COPY OF EXHIBIT 2.

F. L. C. J. T. S.
E. P.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 16, 1898.

Pursuant to Section 882 of the Revised Stat- 679
utes, I hereby certify that the annexed is a true copy of the original on file in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the department of the Interior to be affixed, the day and year first above written.

C. N. BLISS,
Secretary of the Interior.

(Department of the Interior.) 680

ORILLIE STRAM and ANGUS McDONALD,

vs.

FRANK W. EATON, and the location of S. H. B. Scrip, 19 D., on Lots 3, 5 and 6, and S. E. 1-4 of N. W. 1-4, Section 30, Township 63, 11 W. 681

U. S. LAND OFFICE,
Duluth, Minn., April 6, 1886.

Hearing ordered by Comsrs. "C" of Nov. 14, 1885, and day of same set by the Register and Receiver, for April 6th, 1886, at 10 A. M.

April 6, 1886. Case called. C. E. Shannon, representing White and Reynolds, responds for plaintiffs and R. P. Edson for defendants.

Defendant moved to dismiss on the ground that the matters set forth in the commissioners order for hearing are not matters which the Land Department properly has cognizance of, but on the contrary, are questions over which the Court alone has jurisdiction.

682 Motion overruled.

Defendant excepts to the ruling.

Plaintiff moves for continuance and supported motion by an affidavit of Fred Reynolds. Marked Ex. "A" and filed.

Motion overruled and case ordered to proceed.

April 7th, 1886.

On motion of defendant, Register and Receiv-
683 er ordered contestants to produce the original complaint or affidavit of Orillie Moreau, a copy of which is on file.

Attorneys for contestants reported that they were unable to produce the same at this date.

Attorneys for defendant thereupon objected to having the case proceeded with and moved to dismiss the hearing on the ground that the contestants refused to produce the said original complaint or affidavit.

684 At this juncture the Register and Receiver adjourned the case till April 8, 1886, 1 P. M., and telegraphed the Hon. Commissioner to ascertain if the original document alluded to was on file in the General Land Office.

April 8, 1886.

Hon. Commissioner answers that the affidavit of Orillie Moreau is on file in the General Land Office.

1 o'clock P. M., case called.

White and Reynolds, Attys. for contestant asks that the titles of the cause be so changed as to show that Angus McDonald is alone contestant, of the location and pretended entry under Sioux half-breed certificate No. 19 D., and that Orillie Stram is with other the defendant.

Held by the Register and Receiver that Orillie Stram, upon whose affidavit, with others, the order for hearing is based, has attacked the validity of the power of atty. and the location of the scrip and is by such action, one of the contestants of this location. 685

Plaintiff excepts to the ruling, and state that he appears only for McDonald.

Defendant's attorney objects to proceeding upon the copy of the affidavit of Orillie Stram (Moreau) on the ground that the same is not a true copy thereof. 686

TESTIMONY.

James H. Power, being duly sworn on part of plaintiffs, says:

I live in Duluth, Minnesota. I am a scaler of logs. In the month of June, 1883, between the 2nd and 24th thereof, I was in town 63, R. 11 W. I started there from Duluth to the best of my knowledge in the latter part of May, 1883, in company with Edward Byrne. No one else was with me going up there. After I got there Jos. Clement and Thos. Ross. The latter about two days, was with me. I went there to take up a homestead. In pursuance of this purpose I built a 687

shanty and partly finished it, and run the line around the location, established stakes at the different corners, writing on those stakes that that was Jas. Powers' homestead, and that was witnessed by the signature of Edward Byrne. Edward Byrne built a shanty and partly finished it and also cleared some land, run the boundary
688 line around his claim, established the corners and wrote thereon that that was his homestead and I witnessed it.

(Witness here shown a stake and upon examination of it said that he could not swear that the stake had ever been on the land in dispute. I cannot say that this is a stake from that land but the stakes were marked similar to this.

When asked if he knew the signature he said
689 that it was so defaced that he did not know it. There were marks put on both buildings on mine and marked "This is James Powers' homestead, taken up as such and such a time, I do not remember what time exactly, and witnessess by Edward Byrne, Jos. Clement and H. R. Harvey. On Byrnes' cabin was the similar notice witnessed by myself and the parties mentioned. The township at that time I understand was not surveyed. I have forgotten what section our lands were
690 in. I can't describe the location. I know where Hyde and McDonald now are and have been for the last year. They now have the same locations that Byrne and mine made, unless changed since the survey. I have not seen their improvements. I was there last about two years ago. At that time Hyde had started his shanty and McDonald had not to my knowledge.

McDonald's claim corresponded to mine and Hyde's to Burn's. I remained there about five

weeks when I made my improvements except 2 1-2
days, when I went to Vermillion. When I came
away I left Byrne there. Byrne and I left the
land both together, we also left the marks on the
posts and buildings as they were. To the best
of my knowledge we left the land the last week
in June, 1883. When I left the improvements con-
sisted of my claim, a house partly built and 691
enough cleared to get around and handle logs.
On Byrne's the shanty was built and partly fin-
ished and about 1-4 of an acre cleared. I went on
to the lands when Hyde and McDonald went there.
I don't remember the date, but I think it was two
years ago, about, this summer. There was not to
my knowledge any other improvements on the
land when they went there than there was when
Byrne and I came away. When I was there mak-
ing improvements there were Indians came there. 692
I think they were packer, they did not, to my
knowledge make improvements. I made my im-
provements as a homestead. Mr. Byrne put the
notice as regards his homestead on his shanty as
soon as it was built. About three weeks before
we came away. Mr. Eaton never was there when
I was there, to my best knowledge, and no char-
acter there that I knew by the name of Orillie
Stram. I was not in the employ of Mr. Eaton in
making these improvements. I was in no one's 693
employ at that time. Joseph Clement stopped
with us and worked along between us and also
went to town when we would want him to. Thos.
Ross helped to survey some lines. I think Mr.
Eaton and Merritt employed him. To the best of
my knowledge he was there three days; I helped
Byrne to run my lines and all lines except what
Ross run. To the best of my knowledge Ross did

not help run my lines but he helped Byrne run lines.

CROSS EXAMINED.

694 I made the Village of Duluth my home before I went up there. I had been a resident of Duluth two months. I had known Edward Byrne since I came to Duluth. I went up there at the suggestion of Edward Byrne. Edward Byrne suggested this land to me one afternoon and we started up the next morning. He told me (Byrne told me) there was a good thing on hand and asked me if I would go with him, he couldn't handle it all alone. I said I would consider the matter. That
695 is all he said to my knowledge. He never told me he was going up there to make improvements for F. W. Eaton. We were in Paddy Welch's saloon when he made the proposition. Thos. Ross was present at the conversation. I can't tell how many talks I had with him. I do not remember how many places we talked in. I talked with Jos. Clement, and Mr. Leonidas Merritt, (Eaton and Merritt) before I went up there. I went and asked Mr. Merritt his opinion. I said I was going
696 up there and he said he was glad I was going.

Q. Did you not tell Mr. Merritt at the time that Edward Byrne and you were going up there, that Byrne was to get one-third interest for making the improvements and that he was going to divide that one-third with you for going with him?

A. To my knowledge no such discourse ever passed between Merritt and myself.

Q. Did you not tell Merritt that Edward Byrne was going to divide his one-third interest he was going to get with yourself and Clement? A. No, I never told Merritt so.

Q. Will you swear positively that no such conversation ever passed between you and Merritt? A. I will, that I did not previous to my go- 697
ing on the land.

Q. Did such a conversation as that EVER occur between you and Leonidas Merritt? A. Yes, it was in Mr. Merritt's office in Duluth. I do not remember who was present. It seems to me someone came in the door but I did not turn around to see. Edward Byrne was not present to my knowledge. I don't recollect the date I went up there or when I came back. Byrnes paid my expenses, he gave me the money here in town. Mr. 698
Byrne did not describe the land to me or what the good thing was until we were half way up there. Byrne talked to me first about making a homestead. Nobody suggested to me to go to Merritt. I knew that Eaton & Merritt were in company when I went to see the latter. I don't know whether Byrne suggested anything about taking a homestead before going up there or whether it was after we got there. I had not made up my mind to anything in regard to the 699
matter until I had seen the land. I did not know what I was going to do about it when I left Duluth, if I found it worthless I was not going to take it as a homestead. I did not testify that Edward Byrne first suggested taking a homestead. I never filed on the land as a homestead. I never presented a filing for a homestead entry upon it. I never went to the Land Office to see if I could file a homestead or pre-emption and never made

any inquiries. We, Byrne and I left the land at the suggestion of Mr. Merritt. I had once filed a pre-emption before going up there. I was ignorant of the law and found out afterwards that I could not hold this land in 63, 11. I don't know what kind of a filing I had made previously to
700 going up there. Some one filed for me, all I know is that I relinquished it. I did not pay anything for it, and don't know if it was on surveyed or unsurveyed land. I can't tell when I went on the land with Hyde and McDonald. I went on there to locate them on this land. I took them up there about one year after Byrne and I came back from there. I got nothing for putting them on the land. I borrowed 20 dollars to do it with.

701 ———

Continuation of Cross-examination of James Power:

My full name is James Henry Power. I said yesterday that before I went up on the land in May, 1883, a man had used my name to file on land. I can't tell how long it was before I went up that this happened. I first discovered that this
702 man had done so soon after his doing. I was told by parties who seemed to know all about it that the land I was filed on was worthless and I never went near it. I found this out before I went up to 63, 11, with Byrne. I never signed my name to any paper of filing in the Land Office, but I think I signed a blank. A certain party came and asked me if I wanted to take a pre-emption. I said yes, but whether I filled the blank or not I don't remember. I don't know who filed it. I did not

know it was filed until some time after. The man was Mr. Grady.

Q. Did you not sign a filing paper in the U. S. Land Office in 1882, on which Angus McDonald was a witness? A. No, not in the U. S. Land Office.

Q. Did ever sign one anywhere which was witnessed by Angus McDonald or any one named McDonald? A. Not to my knowledge. 703

(Witness here shown a declaratory statement and acknowledged that he signed it). The paper was signed at Capt. Norris's. I never signed but one paper.

Defendant offered the declaratory statement in evidence marked Exhibit "B," and filed.

Q. How do you account for your testimony awhile back that somebody filed a D. S. without your knowledge or authority. A. It was filed without my knowledge. I was not present when it was filed. 704

Q. Did you direct the paper to be filed in the Land Office. A. No. I gave the paper to Mr. Grady after I signed it. I knew when I signed the paper that it was to pre-empt land.

Q. Did you sign the paper for fun or did you intend to pre-empt land when you signed it? A. I was not particular. The notices which Byrne and I put on our shanties were alike except as to names. One was that one claim was Byrne's homestead and the other was mine. I am as positive of this as regards my claim as I am of anything else I have testified to. 705

Q. Are you just as positive as regards Byrne's notice? A. I am positive that on Byrne's

shanty the notice stated that it was Byrne's homestead. The notice was written on one of the logs of the shanty near the door, on the front of the building. I know there was but one notice on my shanty, and to the best of my knowledge there was but one on Byrne's. There might have been more.

706 Q. Was not this the notice that was on Byrne's shanty "Edward Byrne (minutes of the land here) (settlement made or commenced or begun) settlement continued—" and nothing else? A. No, I never remember of seeing such a notice on that shanty. I remember when I went to Vermillion Lake after supplies. I got the supplies on an order from Byrne. I cannot recollect the amount of the order but as near as I can recollect
707 it was for pork, flour and other provisions in small quantities. It was not as much as a barrel of flour. I met Dick Fagan when I was returning with the supplies. I met him as I was going out to Vermillion Lake not over ten miles from Tower. I had a conversation with him about the land in contest.

Q. Did you tell him Eaton & Merritt were going to scrip that land? A. Not to my knowledge.

708 Q. Do you swear positively that you never told him such a thing. A. I do swear positively.

Q. When you returned to Duluth after leaving the land did you go to the office of Mendenhall & Haines with Byrnes? A. I was in that office with him. I went in first and Bryne went to change his clothes and then he came. Mr. Eaton, Merritt, Byrne, Clement and I were together. As near as I recollect a relinquishment was made out

for me to sign, relinquishing the right to the improvements. There were papers also made out giving me a 1-9 interest in said land. I don't remember whether it was a deed, or not. It was given me for to relinquish my right to what improvements I had on the land.

Q. Was it not given to pay you for your services up there. A. No sir. 709

Q. Who gave you that deed. A. I understood it was Eaton & Merritt. I never saw the deed. I sold my 1-9 interest to Mr. Lonstorf of Milwaukee. (Witness here shown a paper and said that he signed it while in Mendenhall & Haines' office.) That is my signature and the paper is what I understood to be a relinquishment of my interest to the land.

710

Q. Was the paper read to you before you signed it? A. It was partly read to me.

Q. Do you read and write? A. Yes, sir.

Q. Take the paper and read what was read to you. A. I can't do it. I was under the influence of liquor at the time. I remember I went into the office before Byrne did distinctly. I then went out again and went to a saloon. Joseph Clement went with me. I don't know whether anyone else went with me or not. The saloon was 711 across the street from the office. I don't remember who I left in the office. I do not remember whether all the other parties except Byrne were in Mendenhall & Haines' office when I first went there or not. When I came from the land to Duluth, Mr. Merritt, Mr. Fagan, Mr. Clement, Mr. Byrne and others were with me, I think the place I went to was a saloon. Mr. Eaton & Clement I think were with me.

Q. Did you not go to Friedenberg's restaurant and get dinner the first place you went to. A. I remember of going to Friedenberg's and getting dinner, but do not remember whether that was the first place I went to or not. I know that the first thing I done was to take a drink.

712 Q. If you can't remember which part of that affidavit was read to you how are you able to state that but part of it was read to you? A. Because I don't remember the words "duly sworn." There may be more but this is impressed upon my memory.

Q. Now I want you to state whether the paper you claim was a relinquishment was entirely read over to you. A. I don't know.

713 Q. What paper was that was half read to you? A. The paper I put my signature to?

Q. Did you put your signature to more than one paper? A. Not to my knowledge.

Q. Was the one you put your signature to read over to you? A. I don't remember.

Q. Did you sign that paper before you left the office and went to the saloon? A. I went out to take a drink before I signed the paper.

714 Q. Your recollection then I perceive from the evidence is clearly distinct in regard to everything you did except what transpired in relation to these papers. A. No.

Q. Was you sworn to any paper in Mr. Haines' office? A. Not to my knowledge.

Q. Was the paper signed by you signed before the deeds were made out or after.

A. I don't remember.

Q. Did not Mr. Eaton after the deed to you, Byrne and Clement had been made out and passed to you, state that he wanted an affidavit from the men that made the improvements showing for what purpose they were made and for whom they were made? A. I don't remember such a proposition.

715 Q. Did not Mr. Haines write the paper that you signed in your presence and read it over after he made it to you before you signed it? A. All that makes me think he did not is that I do not remember the words "Duly sworn" there were certain papers read to me that I did not then and do not know now what they contained. I mean that they were read or partly read.

Q. Do you understand English when it is read to you? A. I do.

716 Q. Why is it that you did not know at the time what those papers contained.

A. Because I drank too much which I must admit to my shame.

Q. Who advised you to inject this drunken business into this testimony today? A. Nobody. (Same affidavit shown witness and he asked to read it over, he did so and was then asked whether the contents were true or false, and answered with emphasis that they were false. 717

Q. Do you know what kind of liquer you drank that day? A. Beer and whiskey.

Q. How many drinks does it take to get you drunk so you don't remember what you were doing? A. Circumstances alter cases.

Q. How much did you drink that day? A. I don't remember. After I got to town I drank in only two places before signing these papers.

Q. How long after you came to town was it before the business was closed with regard to these papers. A. I don't remember but it was the same day. (Affidavit referred to now offered in evidence marked Exhibit "C" and filed).

Witness now shown another affidavit purporting to be signed by him—says: The signature is
718 mine. I swore to that affidavit and remember the words "duly sworn" in it. I made it of my own free will.

Q. Who requested you to make this affidavit? A. Mr. White, and I made it in his office in Duluth.

Q. Did either one of the contestants ask you to make the affidavit. A. I don't think they did.

719 Q. Who got you to go and make it? A. I went of my own free will.

Q. What was your object in making it? A. Mr. White asked me some questions whether I had made any improvements on the land under any one's instruction or supervision, and I said no; which was true. He asked me if I would make affidavit to that effect and I said yes.

Q. Was you under the influence of liquor at that time? A. Not to my knowledge. No. I was
720 sober. I have examined the signature to this affidavit and the one to the other shown me this morning.

Q. Did you see anything in those signatures that indicated on the formation of the letters that you were any more intoxicated when you signed the one that you were when you signed the other. A. Yes, I see indications here in this one (Exhibit "C") that I was intoxicated when I signed.

Q. What is it you see? A. I see by the formation of the letters of the first name. I never write it so unless laboring under some temporary excitement. I think the signature to this last affidavit looks the most sober of the two. Affidavit referred to marked Exhibit "D" and offered in evidence by defendant's attorney for the purpose of showing that witness committed perjury 721
in one or the other of the affidavits.)

Q. Previous to making this last affidavit how much had you received from Mr. Lonstorf for your interest in this land.

(Objected to by plaintiff's attorney on the ground that it is irrevelant.) Witness called upon by the Register and Receiver to answer the question.

A. I got seven hundred and fifty dollars in 722
all. I took the money and did not care what became of him. It was immaterial to me. I had taken advice on the legality of the entry. I don't remember whether I took the advice before or after selling to Lonstorf. No one ever said the entry was illegal before I go my deed from Orillie Stram.

Q. Notwithstanding the fact that you got $750 out of Lonstorf for your interest in the land you voluntarily of your own free will and accord 723
went to White's office (White & Bower) and made this affidavit.

A. Yes, I made it at White's request.

Q. How much did you get for it? A. Not a nickel, no money, no promise.

Q. You even borrowed money and gave your note for it, to go and put Hyde and McDonald on this land, did you? A. Yes, sir, and I haven't

paid the note yet, but calculate to when it is presented.

Q. Who did you borrow it of?

(Not answered.)

Q. Now don't you think you played an almighty mean caper on Lonstorf in making this
724 affidavit, and putting the contestants on the land wthout any compensation whatever? A. My answer to that is that he took his own chances.

Q. How much of this land do you expect to get if this land is made vacant? A. None.

Q. How much compensation are you to receive for coming here to testify? A. There has been no stipulated price agreed upon—but I expect pay certainly.

725 Q. Did you make the last deed after you put contestants on the land? A. I do not remember.

Q. Did you not charge Lonstorf fifty dollars for making a new deed to correct the old one? A. I told you I received $750 in all.

Q. It is not a fact that after you placed the contestants on this land you charged Lonstorf $50 for making a new deed to correct the error in the
726 first.? A. I do not remember.

Q. When did you put contestants on this claim? A. In the year 1884, in the summer, the fore part of the summer to the best of my knowledge.

Q. Did you talk with Lonstorf about your improvements at the time you made the first deed? A. Not to my knowledge.

Q. Did you not tell him that you got a 1-9 interest from Mrs. Stram for making the improve-

ments for her on this land. A. I never mentioned Mrs. Stram's name.

Q. Did you not tell him that you make the improvements with Byrne for Eaton & Merritt? A. No, sir.

727

RE-DIRECT.

Q. In your cross-examination you state that you came away from the land at the suggestion of Mr. Merritt. Give us the full details of that suggestion, where the conversation took place and when it was? A. I had no conversation with Mr. Merritt and he said nothing to me about it, not to my knowledge—except that Mr. Merritt 728
told me up there that I was wealthy. I never made any change with Merritt whereby I was to let him scrip the land. I made an agreement with Merritt whereby I was to let him scrip the land. I made an agreement with Mr. Merritt through Mr. Byrne afterwards, this was on Fall Lake, I think, about 1-4 of a mile from the land just as we were starting down to Duluth. Mr. Byrne told me we would get 1-3 for our relinquishment. I made no reply as I was satisfied I could not do better. 729
There were certain circumstances which prevented me. This was the first that was said where any amount was agreed upon.

Previous to this Fagan had talked to me. Fagan & Merritt came there together the Saturday before we left. Fagan said would I be satisfied for them to scrip the land. I told him that I had heard that other parties had scripped it. And he said that it was not so, and I told him

then that I took it up as a homestead and wanted something out of it. He said that I held the pre-emption and could not hold a homestead, and said that it was his intention to expose me if I did not agree to their terms. He said I would be dealt square with and that was all that was said. This was before Fagan and Merritt came up together,
730 about a week before to the best of my knowledge.

Defendant moves to strike out all the evidence relative to the conversation between Fagan & Power on the ground that Mr. Fagan had no authority to represent Eaton or Mrs. Stram. When Fagan & Merritt came there together, they looked over the land. Stopped over night, and started for Duluth on Sunday morning.

731

April 10, 1886.

Re-direct examination of James Power continued.

I knew Fagan before this. I understood him to be in the employ of Eaton & Merritt. I had heard that from Lon Merritt. Mr. Merritt said in my presence that Fagan must be a pretty good
732 man as he (Merritt) paid him such and such a salary by the year. When Mr. Fagan came there a week before he and Merritt came together he said he was sent there by Eaton & Merritt. I was not on the land when Fagan was there the first time. I met him coming away as I was going on the land from my trip to Vermillion. I was not away over three days. About a week later Fagan and Merritt came on the land together. While Byrne and I were on the land making improve-

ments Mr. Lonstorf, Mr. Harvey, Mr. Parrault, Mr. Hartmann and others whose names I do not know were on the land, and at the time they were there the marks were on the shanty and plain to be seen.

733

RE-CROSS.

At the time Fagan & Merritt came up there Mr. Byrne, Mr. Clement and I and I think one Indian packer were there.

Q. Did you sit down at the door of the shanty with these parties and talk until late at night? A. I had no time piece and don't know how late it was, but we sat there talking.

734

Q. Did you not talk over just what the object was in being there and the whole arrangement? A. No sir, not to my knowledge.

Q. Was that not on Saturday, June 23, 1883? A. It was on Saturday, but I don't remember the date.

Q. Was not the interest that Mr. Byrne was to have for making the improvements talked over at that time? A. Not in my presence.

735

Q. Was not the interest also that you were to receive from Mr. Byrne for assisting him also talked over at that sitting? A. Not in that light.

Q. Did you not state at that sitting that that was just as you understood it before you went up there and that you were satisfied or words to that effect? A. No sir. I never slept in the shanty over night—that I put up there.

Q. Did you not sleep in the shanty that you claim was put up by Byrne for a homestead? A.

Yes, I did sleep in that shanty. We had a tent pitched within the walls of the shanty. The tent was never pitched on my land.

Q. Did you ever pay Byrne anything for the minutes of your alleged claim? A. I never paid him anything or never promised to pay him any-
736 thing. I never was asked anything for the minutes. I have received money from Byrnes. I never paid Byrnes anything for supplies nor promised to. I never was asked to pay him for them. I refunded the money I got from Byrne before going up there. I knew when I went up there that I had filed a pre-emption but was not positive of it.

Q. How long after you came down here and received your deed of your 1-3 interest with Byrne and Clement was it before you discovered that the
737 affidavit you signed in Haines' office was false? A. I never knew that I made an affidavit in Mr. Haines' office until I saw it in this trial.

Q. Did you not see a copy of it while you were in jail? A. I did.

Q. Do you now still insist that the contents of the affidavit made by you, Byrne and Clement in Haines' office were false? A. I do.

Q. Did Clement help build your shanty? A.
738 Yes, sir.

Q. Did you ever pay or promise to pay him anything for his help? A. Yes sir.

Q. How much and when? A. There was no stipulation made. I was to give him an interest in the land. Clement and I had an understanding that whatever I got out of the land I was to give him half of. We understood I was to make a homestead.

Q. Was this understood before you made them improvements? A. It was understood in the act of making the improvements.

Q. Did you have an understanding with Byrne to give him something also? A. I did not.

Q. He helped you did he not? A. Yes. 739

Q. Why did you not give him something also? A. He had a homestead himself and I helped him

Q. Why did not Clement also take one? A. I ain't prepared to say. I don't know where Clement is now.

740

RE-DIRECT.

When we were talking that Saturday night by the shanty as I have before spoken of there was nothing said in my presence about the interest I was to get for helping make the improvements, but Byrne took me one side and told me we would get a one-third interest in the land if we would relinquish, or words to that effect. I made 741 no response to that that I remember of. And left the land the next morning. I really believe it was Sunday morning that Byrne told me this and we started for Duluth the same morning. After that talk I done no more improvements on the land that year. (Witness here shown Exhibit "B" and states that he did not fill in the body of it. That it was blank when he signed his name to it.

RE-CROSS.

I don't remember whether Dick Fagan was present when I signed the paper. I am positive it was blank when I signed it. The morning that Byrne called me one side was just before we left the land to come to Duluth and told me we would
742 get 1-3 interest in the land was the first time I ever heard that I was to get a specified interest therein.

Q. You wish then to be understood that you were with these parties all the night before, had made your arrangements to leave and come to Duluth, without knowing what your interest was to be until just as you were starting away? A. I had made no arrangements to leave the land.

743 Q. When did you make arrangements to leave the land? A. I never made any arrangements to leave the land. The rest went away and I had to go or stay there and starve. If I were speaking of actual labor I would say that it did not take me more than a day to build the shanty on my land. A day to roof it and a day to cut a hole for a door. Three days altogether. That is, it could be done in that time, although I was three weeks at it, because I was not at it steady and
744 some days did not work at it at all. Mr. Clement helped me at times, for which I agreed to give him one-half of what I got out of the land. It was a mutual understanding between Byrne, Clement and myself that we were to have an equal interest in the proceeds of what we would receive from the land, we had that understanding before we left town to go up there on the land and also talked it over several times after we got up there. Clement was a witness to both our notices on the

land. When we came from the land to Duluth to make out the papers I had been drinking before we got to town. I took drinks at the junction (Northern Pacific Junction about 27 miles from Duluth) and we came from there on the train. At the junction I drank with Jos. Clement and another party whose name I did not know. I remember of taking three drinks there. The friend of mine whose name I do not remember paid for the drinks. 745

This testimony was carefully read over to the witness after which he subscribed his name thereto.

JAMES H. POWER.

After reading the testimony to witness he was duly sworn this 10th day of April, 1886, before me. 746

R. N. MARBLE,
Register.

April 12th, 1886.

Thomas W. Hyde being duly sworn in his own behalf, as contestant, says: 747

I am one of the contestants on what is known as scrip 19 E. Have been on the land since 20 August, 1884, except at brief intervals when I went there I found a shanty 12x14 feet, half roofed with tamarack and birch bark. It was not mossed and no door hung and no glass in the window, although there was a hole cut for a window. It was not nor never had been inhabitable in my opinion. There was a small clearing on

it, also. There were marks on the shanty. Byrnes came as a homestead was there. The names of Jas. Power, Harvey & Perrault, and Hartmann was also on it. There was also other writing which I could not make out. This was written in pencil, all of it. This shanty is 40 or 50 feet from where
748 I made my improvements. I have built a house. Mossed it, put a floor, door and window in it and cleared two acres of land and put a scoop roof on the shanty. These imprvements are on the N. E. 4 of S. W. 4 of Section 30. There is about 1-4 acre clearing on the S. E. 1-4 of N. W. 1-4 of same section by me.

749

CROSS-EXAMINATION.

Q. Who first suggested to you about going on that land? A. I had a talk with James H. Power. I was around Duluth here when I had the talk. This was a couple of weeks I suppose before I went up there. I could'nt just say whether he spoke first or whether I did. I had not talked with Mr. White before I had with Mr. Power.

Q. Did you suggest to Power to go up to
750 White's office and make affidavit, Exhibit "D."? A. I had a talk with him. About it and he claimed he could make the affidavit.

A. I did not make any arrangement with him to give him interest in the land at any date.

A. He was not to have any interest.

A. Powers put me on the land.

A. I paid him nothing for putting me on the land.

A. I did not agree to allow him anything at that time but agreed to allow him for what time he lost in case we succeeded in getting the land.

A. McDonald and I paid his fare down on the boat and up on the train.

Q. Then when he testified that he borrowed the money ($20) and gave his note for it to pay his 751
expenses down there he testified to an untruth did he? A. We paid his fare on the boat and on the train, but what his outside expenses were I know nothing about. I know nothing about his borrowing the money, or giving the note.

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation or interest in the land? A. Yes, there was a contract. 752

Q. Where is it? A. I don't know.

Q. When and where did you last see it? A. I have not seen it since it was last drawn up by Mr. White.

Q. What did it contain? A. It contained that when I proved up on the land I was to secure him a one-half interest.

Q. Who witnessed the contract? A. Powers, McDonald and myself and Mr. White were 753
there together, that is all I recollect. I can't say whether Power witnessed it or not.

A. The last I knew of the contract Mr. White had it.

A. Mr. Power was not included in the contract with McDonald, Hyde (myself) and White.

A. I did not find as much as a quarter of an acre cleared on the land when I went there

A. I found a shanty which did not have the appearance of having been lived in. It had no fire place or stove.

A. I directed myself to make the improvements, which I made. I was to get money from Mr. White when I needed it to pay my expenses.

THOMAS W. HYDE.

754

Subscribed and sworn to before me this 12th day of April, 1886.

R. N. MARBLE,
Register.

Angus McDonald, being duly sworn on his own

755 behalf, says:

I reside in Lake County, Minn., Sec. 30, T. 63, R. 11 W. I have lived there since August, 1884. Before that I resided in Duluth, Minn. I am on what land Powers says he made improvements on. When I went there I found a house 12x14 feet 1 1-2 stories high, covered with bark, with a door in it, floor, no windows, there was a bunk in it. There was a little clearing about one hundred feet square. There was marks upon the house.

756 It has Powers' name on and said it was a homestead. I remember only one other name and that was Harvey. I have gone on since and made a clearing and built a house on it. I live in the house I built myself. I have also been over on the other claim where Hyde is. When I went there I found a shanty same size as that found on the claim I am on. It was partly covered with bark. The door was made but not hung. There was a hole cut for a window but no window. There

were also marks on this shanty. I saw the name of Edward Byrne on it. I found stakes around. (Witness here shown a stake and identified it as one he saw cut, and stated that it was on the range line between R. 11 and 12, and sections 13 and 25.) (This was the same stake shown Power.)

757

Attorney for plaintiff here offered stake in evidence. Attorney for defendant objects to it as being incompetent for any purpose, and also that there is nothing in evidence to show that defendant ever used the stake or marked it.

EXAMINATION CONTINUED.

This stake was found on the west line of Hyde's claim. I saw three or four other stakes around the claim, but did not notice whether they 758 were marked or not.

Witness here shown Exhibit "B" (a declaratory statement purporting to be witnessed by him) and when asked if he signed the name McDonald which appears as a witness states that he never signed it.

CROSS EXAMINATION. 759

I first learned of this claim in August, 1884. Jas H. Power first informed me of it. He was the party I first talked with about it. He wanted me to go with him to White & Bowers' office. I had been around town with him before that. He spoke about this claim first. He put me on the claim. Mr. White (White & Bower) has furnished the supplies to keep me on this claim. I am

making the improvements for myself. I don't know of any one being interested in this claim except myself. Judge White has no interest in it. There is an understanding that he is to have an interest in it if we succeed in this trial. He is to have a 1-2 interest. I know R. D. Mallett. He has
760 no interest in the claim. He is not going to have any. The arrangement with Hyde is same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we succeed. I don't know how much he is to get. I agreed to give him an interest if we succeeded in getting the land. Mr. Hyde went after Power to come and testify in this case. I never had any talk with Mallett about the claim. Mr. White is paying the expenses of the claim with the under-
761 standing that he is to have 1-2 of it after we secure it. The expense so far has been about $300. I have given Mr. White notes for amounts advanced. I give him the notes so that if I don't get the land I would have to pay them. He has also furnished me money to go up and down with to the land and back. He pays me when I ask for it. I am not hired by the month. I had not talked with anybody besides Power.

762

RE-DIRECT.

Q. This half interest you speak of that Mr. White is to have was it to be a deed of, or a security upon a half of the land for advances and services? A. It was a security.

Q. This interest you have spoken of as to Mr. Power and which you say you cannot fix

the amount it, why was that, was it not simply that he was to be paid for his time and services and there was no telling how much time he would have to put in it? A. He was to be paid for his time. That is all I mean by an interest he was to have.

763

CROSS EXAMINED.

I am to let him have an interest in the land when I get it to pay him for his time and services. The contract I have with Mr. White for his 1-2 is in writing.

Q. When you get this land is it not the understanding between you and Mr. White that you are to deed to him an undivided one-half interest 764
in it? A. No, sir, we never mentioned a deed.

Q. What did you mean then by saying that White is to have 1-2 interest? A. To secure him for advances.

Q. Then if it was to secure advances made how can you give him a half interest unless you deed him one-half? A. I could not very well.

Q. Then of course your understanding is that you are to deed him one-half, isn't it? 765

Question objected to on the ground that it is argumentative. That the witness has already said and explained that he is to give security upon one-half and that he is not to deed one-half; and that not being a lawyer he is not expected to explain to a lawyer the distinction between a security and a conveyance.

A. No. That is not my understanding.

Q. Really you do not know anything about it, do you? A. I know my own transaction about it, but I don't know White's.

Defendant now asks that plaintiff's attorney Mr. White, produce the contract which witness says he has signed. Mr. White states that he has looked in vain for it lately and if he can find it he
766 will produce it.

Q. Did you not understand at the time you went up on White's office with Power, from what he, Power, told you, that he had been talking with White about it before that. A. Yes.

Q. Was it not a part of the services Power was to render that he was to come here and testify in this case. A. No.

Q. Was it not the understanding that he was
767 to put you on the land and help you by testifying in this case? A. If he was called for. Yes.

ANGUS McDONALD.

Sworn and subscribed to before me this 10th day of April, 1886.

R. N. MARBLE,
Register.

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768 George R. Stuntz, sworn for plaintiff, says:

I am county surveyor of St. Louis Co. I have here the record of the survey of Section 30, T. 63, R. 11 W. It was made by my deputy, Mr. McPherson, but was not made for the government. It was made by the request of parties interested. It was made Oct. 17, 1885.

Defendant offers objection to the evidence because it appears that the survey was made sub-

sequent to the making of the improvement on the land. Also for the further reason that this survey or a government survey does not effect a location made in good faith by Sioux half-breed scrip and located by metes and bounds before the survey and where no settlement is required by the scripee.

769

EXAMINATION CONTINUED.

Inside lines of a section are not made by the government. My deputy is a competent surveyor. The two buildings now on the sketch are according to my survey, and are on N. E. 1-4 of S. W. 1-4 of Sec. 30. Copy of the plat of survey offered in evidence.

(Objected to as incompetent.)

770

The sketch of survey offered in evidence by plaintiff objected to because the surveyor claims to have surveyed out Sec. 30, whereas from his report it appears that he had run only the center line which is not an east and west line, but according to the record is run at an angle of S. 86 degrees 17 minutes W.

It is understood that defendant shall call Mr. Stuntz for cross examination hereafter before the close of the case if desired.

771

GEORGE R. STUNTZ.

Subscribed and sworn to before me this 10th day of April, 1886.

R. N. MARBLE,
Register.

Jewett McPherson, sworn, says:

I reside in Duluth, Minnesota. I am deputy surveyor. I made a survey of one mile of line and a fraction over of Sec. 30, T. 63, R. 11. Exhibit "E." represents the work I did. I established a quarter line east and west through the section.

772 (Testimony of witness objected to for the same reason as that of Mr. Stuntz.)

I found the two houses shown on this plat. I could not say what subdivision of the section they are on. They are south of the center line of the section east and west line through, and west of the center line north and south through the section. They are situated as shown by the records kept in the county record book of the county surveyor. Which I have read over and sworn
773 to once and know is correct. I was appointed and sworn as deputy surveyor, took a government survey chain, and got Angus McDonald and another man to go with me. I had them sworn, and we made the survey. As a result I am satisfied we made the survey correct.

774

CROSS EXAMINED.

Mr. McDonald was the first man that spoke to me about the survey. Mr. White guaranteed my pay. The government establishes the corner and quarter section posts of a survey.

Q. In making that survey did you discover any error made by the government survey of the section in the establishing of corners or quarters?

(Objected to on the ground that the original government surveys whether right or wrong are those by which all subsequent conveyances are governed and controlled.

A. I did. I went to the west side of the section, to the quarter post. I had the U. S. record to see if that post and bearings were correct and found they were. I then set up my solar and found my latitude, thence ran east through the center of the section as I supposed. At 93 chains and 26 links I intersected the east line of the section. I intersected 6 chains and 20 links south of the 1-4 post on the east side as shown by the U. S. survey. I then went to the quarter post and ran south 86 degrees 17 minutes W., proved that the line I had run from east to west was a direct east and west line. I found the 1-4 post on the east line 24 rods and 8-10 north of where I expected to find it. I ran a due east line. I found the 1-4 post on the west side correct, but the 1-4 post on the east was 6 chains and 20 links north of where it ought to be. If the line had been carried correct it would have brought the improvements south of the line some 50 or 100 links. 775 776

J. McPHERSON.

Subscribed and sworn to before me this 10th day of April, 1886. 777

R. N. MARBLE,
Register.

Emil Hartmann being duly sworn on the part of contestant, testifies as follows:

I reside here in Duluth. I am a civil engineer and land explorer. I have been on Sec. 30, T. 63.

R. 11 W. I was there in May and June, 1883, in June 1883 I saw Power, Byrne and Clement on that section. They were building shanties. There was a log on Byrne's shanty which served as a sort of hotel register and every one that came there signed his name on it. There was also written on it "Homestead entry of Edward Byrne.
778 Settlement made in May sometime, and the lines of the claim drawn. Byrne was there and he explained it to me. He only just showed me which 40s he had taken, as was shown by the lines on the log. I was there also in 1884 and 1885, I saw these same marks after Byrne had left there. I was there twice after Hyde went there. I think there were no marks there then on Byrne's shanty. The marks on Byrne's shanty were made with a pencil.
779

CROSS EXAMINATION.

When I went there in June, 1883, I had a talk with Byrne relative to his object in being there. He did not tell me Eaton & Merritt was going to scrip the land, I thought Lornstorf was going to scrip it. I told Byrne I had come up there and that I wanted to scrip the land. On Satur-
780 day morning before Lon Merritt came there Byrne said if some one don't come by this evening we will deal with you. I made no memorandum of anything on the building and did not sign my name on it. I would not pretend to say that I could tell every word that was written on the shanty without a memorandum.

RE-DIRECT.

The word homestead was on the poles or stakes and also on the shanty and if it was not understood that Byrne claimed it as a homestead some one else would have had a homestead on it.

EMIL HARTMANN.

Subscribed and sworn to before me this 10th day of April, 1886. 781

April 14, 1886.

S. F. White, being sworn, deposes and says:

I am one of the attorneys for the contestants. I have made careful search through my safe and among all for the contract of security given to me by the contestants in these cases to secure me for advances and legal services and am unable to find it. I supposed until about two or three days before the day set for the hearing that it was in the files of the cause at my office, but looked through that and could not find it and then made a careful search through my safe and among all papers where I thought it could be and have continued that search at various times since up to this morning when I made a final last search through my safe and am unable to find it and have no idea where it is. 782 783

SHUABEL F. WHITE.

Subscribed and sworn to before me this 14th day of April, 1886.

R. N. MARBLE,
Register.

TESTIMONY ON THE PART OF THE DEFENSE.

Frank W. Eaton, duly sworn, says:

I am one of the parties defendant in this case. I know the description and location of the land in
784 contest. I had something to do with the improvements on said land. I was the duly appointed attorney in fact for Orillie Moreau—Stram—and authorized the making of the improvements for the purpose of locating the scrip in question under the rules of the Land Department. (Witness here shown the files in S. H. B. scrip, 19 D., and identified the scrip certificate and power to locate as the authority under which he proceeded in having the improvements made upon the land preparatory to locating the same.) Also identified his
785 own affidavit of the fact of the improvements having been made. Files offered in evidence and marked Exhibit "F" and filed. Witness then shown the files in scrip No. 19 E., and made a like identification. Files offered in evidence marked Exhibit "G" and filed. In having these improvements made upon the land in question I had no other purpose in view but the location of scrip by virtue of the power of attorney. I made the im-
786 provements in good faith solely in pursuance of the powers of attorney for the purpose of securing the location of the scrip in proper form and manner. At the time I caused the improvements to be made the land was unsurveyed and I had no knowledge of it except that it was vacant, unoccupied and unclaimed land by any other persons. I employed Edward Byrne to go and make the improvements upon the land in the first and I subsequently employed Richard Fagan al-

so to go up there. I agreed with Edward Byrne that in consideration of the land proving valuable as he represented to me and in consideration of his erecting or causing to be erected for me valuable improvements on two locations of 160 acres each, that I would pay his expenses necessarily incurred in doing the work, that I would locate the scrip upon the 787
land and as soon thereafter as the location was completed I would cause to be conveyed to him an undivided one-third interest in the land.

To the best of my knowledge Mr. Byrne fulfilled his part of the agreement. I also fulfilled mine. At the time I made the contract with Byrne I knew nothing about James Power or Joseph Clement. I don't think Thomas Ross did anything. I am informed that he went upon the land but 788
do not know what he did. I was present when Byrne, Powers and Clement returned from the land and saw them at the office of Chas. R. Haines (Mendenhall & Haines). Witness here shown Exhibit "C" and identified it. I was present when that affidavit was made. It was read over to Mr. Power. The subject matter of it was talked over with him and the whole affidavit was dictated by me in Mr. Powers presence. It was made after the deed was executed conveying Byrne, 789
Power and Clement 1-3 interest in the land. The circumstances under which the affidavit was made and dictated are as follows: I did not know at that time how much proof was necessary to establish the fact that I had caused improvements to be made on the land, and I thought it necessary that Byrne, Power and Clement should furnish additional proof and for that reason I had this affidavit executed by them to furnish the de-

partment in case more evidence was required. At the time this affidavit was made Mr. Power was sober, and fully understood the contents of it. It was read over to him and explained to him thoroughly. I have papers from Mrs. Stram confirming all my acts as her attorney and also the acts of Leonidas Merritt.

790

Witness here produced the papers alluded to. Offered in evidence by defendant. Marked Exhibit H. and filed.

Edward Byrne was the explorer who first discovered the lands, and he came to me and told me of them.

791

CROSS EXAMINATION.

I was never on those lands. I first saw Orillie Stram March 31st, 1886. I first saw the scrip papers in Duluth, Minn., some time in the last of May or first of June, 1883, soon after the powers were executed. They were sent here to me and I never had seen them before, I think they were sent by mail. I got them from Byron M. Smith,

792 Minneapolis, Minn.

Q. Then you located these pieces of scrip for the purpose through them of obtaining title to the lands they should cover yourself? A. My intention was to have an interest in it. I did not expect to have the whole.

Q. Who else did you expect to have an interest. A. Mr. Merritt, Mr. Fagan and Mr. Byrne that is all.

Q. You did not expect Mrs. Stram to have any interest in it then? A. No, I did not expect her to have any interest in the land, although she might.

Q. You considered then did you not, that by purchasing the scrip you would obtain all the title to the lands to be located under it, and the 793
scripee named in the scrip, would have no interest in the land and you made the arrangements for the improvements under that supposition did you not?

Objected together with all this evidence relative to title for the reason that the scrip patent is issued to the scripee. That Frank W. Eaton was only empowered to locate the same and that by the location of the scrip the title became vested in the scripee and it is wholly immaterial 794
what Mr. Eaton may have expected with regard to the purchase of the land as that was a subsequent consideration and no title could pass in any event without the execution of a deed by Orillie Stram or her duly authorized attorney in fact.

Defendant also moves to strike out all the testimony as to what Eaton's intentions were as to what interest he and others expected to get in the property. 795

Question by the Register:

Q. Did you not know at this time that Mr. Merritt was empowered by letters of attorney to sell and convey the land and were you not acting with him jointly in the premises? A. Yes. Mr. Merritt was empowered by letters of attorney to time.

Answer to question previous to last:

A. I made the improvements under the supposition that when he conveyed to me her scrip and power of attorney to locate the same for a valuable consideration and the further contract on her part for a valuable consideration to fully confirm all my acts and also the acts of Leonidas
796 Merritt, her attorney in fact, for the purpose of conveying the lands located under and by virtue of said half-breed scrip that all her rights to any land as far as she was concerned was thereby transferred.

Q. Transferred to whom? A. To whoever her attorney in fact might desire.

Q. You had all these papers that you mentioned in next to your last answer, and Eaton & Merritt had paid the full consideration therefor
797 before the 16th day of June, 1883? A. No sir.

Q. What of those papers did you not have? A. We had the power to loc[illegible] and convey prior to that time, but we had not fully paid for them.

Q. Who did pay you? A. I made the first payment to Byron M. Smith, and paid the balance to Orillie Stram March 14, 1886. I made no payment to her until then. I had agreed to pay her previous to that time. I made the agreement at
798 the time the powers were obtained by Byron M. Smith.

Q. Did you know at the time this land was conveyed by Merritt (Mrs. Stram's attorney) that Smith had made any such arrangement on her behalf? A. I have already answered the question in answer to the last question bef[illegible]e this.

Q. Did you make that arrangement yourself with Mrs. Stram at the time the powers of attorney

were given or did somebody else act for you in making that arrangement.

(Objected to as immaterial.)

A. Byron M. Smith was acting for me supposing that he had full authority. He acted for me and for her. He held her scrip and got new powers of attorney and made the arrangement. I 799
knew of this arrangement at the time we procured the scrip.

Q. That is then, your arrangement was with Smith that you should pay him a certain sum which you did pay for the scrip and a certain other sum which you paid finally March 31, 1886, to Orillie Stram.

(Objected to as incompetent.)

A. Yes. 800

Q. When was you to pay that sum to Mrs. Stram under the original arrangement? A. After the location was perfected and the scrip adjusted.

Q. Were names filled in those powers of attorney when you received them or did you fill them in after you received them?

(Objected to as immaterial.)

A. They were filled in after I received them. 801

Q. Was the amount to be paid to Mrs. Stram under your arrangement with Smith dependent in any manner upon the value of the land obtained or was it a fixed amount?

Objected to as immaterial.

A. There was a fixed amount between Mr. Smith and myself.

Q. Was Mrs. Stram ever on the land or not, to your knowledge?

Objected to as incompetent.

A. I don't know anything about it.

Q. Mr. Eaton will you explain why you made oath in this affidavit that has been offered here
802 that you had as attorney build upon each of said pieces of land a dwelling house 14x16 feet, 1-story high, built of timber and covered with split shingles with door and windows and had cleared ready for cultivation 1-2 acre of said land and that said improvements were made under the personal direction of said Orillie Stram, and for her personal use and benefit when according to your own testimony you never had seen Orillie Stram and never had been on those lands? A.
803 Because it was true to the best of my information.

Q. You did not make these affidavits on information and belief did you? A. Only that portion relative to the improvements on information and belief. As to the other I was acting as the authorized attorney of Stram under a power of attorney and my acts were her acts, and you cannot separate the attorney and principal. And the improvements were made by Byrne and Mr. Fagan
804 directly in my employ and the improvements were such as Mr. Fagan reported to me which statement of his I then believed to be true. I had only such knowledge in relation to improvements as I have stated. The men came down from the woods the same day as the deeds to Byrne, Clement and Power were executed.

Q. That is July 2, 1883, if the date on the deed is correct? A. Yes.

Q. How long would it take parties to come down? A. From 3 days to two weeks, according to weather and other circumstances. I don't know how long it took them.

Q. Had Fagan been to those lands for you more than once before they all came down? A. That was his second trip when they all came down. 805

Q. Did you have this scrip when you first made arrangements with Byrne to scrip the lands? A. I did not have the scrip at that time.

Q. At what time did you make the arrangement with Byrne? A. Some time the last of May, 1883, we first talked it over. I made a definite arrangement as far as he was concerned at that time. He went up to the lands the next day I think. 806

Q. Both the powers, to you and Merritt were received by you in blank, were they? A. They were.

RE-DIRECT.

Q. Was Power sworn to the affidavit, Exhibit "C," in your presence. A. Yes, he was DULY SWORN. The power to locate was filled 807 out by Luther Mendenhall, and in the power to convey Mr. Merritt's name was filled in by Byron M. Smith, a few days after I received it.

CROSS EXAMINED.

Power was sworn with his hand uplifted simultaneously with Byrne and Clement. I know this

by seeing him in the act. Power was in the office all the time during the time the affidavit was being prepared.

Question by Register:

Q. How long a time were you all in Mendenhall & Haines' office that day? A. I should say
808 about two hours.

FRANK W. EATON.

Subscribed and sworn to this 14th day of April, 1886.

R. N. MARBLE,
Register.

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809 April 15th, 1886.

Edward Byrne, being duly sworn, says, I am forty years of age and reside in Duluth, Minn. Have lived there about 6 1-2 years. I am an explorer. I know the property that is in controversy in this case. I discovered the property myself. I know Frank W. Eaton of Duluth, Minn. Have known him about 6 years. I made improvements upon the land in dispute. I built one house 14x16 feet, with a floor and roof, door and window, bunk
810 and table, and another house similar in size to the first house built nearly the same as the first except that it had no window, although a space was cut out for one. I also cleared 1-2 an acre of land. I heard the testimony of Hyde and McDonald. They were mistaken as to there being but half a roof on the shanty, at least as they stood when I left them after building them. There might, however, have been a half roof when they went there a year or so after they were built. The house

as I left it WAS inhabitable. Considering the time of year there was no stove in it and none was required, that is there was no fireplace or chimney as none was required at that time a year. Heating in that part of the country is done with fireplaces. There WAS a door hung in the doorway of the shanty with leather straps when I left. Doors and windows of shanties are commonly 811
stolen in that country by settlers to use on their own shanties when they find owners of property absent. I made those improvements under the direction and instruction of Frank W. Eaton. I made no improvements there in my own behalf. I did not nor did anyone with me make any improvements for the purpose of claiming the land ourselves under the homestead or pre-emption law.

812
Q. Power says that you and he put homestead notices on the buildings. If you did so you may explain why it was done and what was the object? A. We went up to hold this land and make good improvements according to Mr. Eaton's directions, and had to put notices at different places on the land in order to prevent other explorers from squatting or making improvements on the land. Mr. Power understood this and why it was done just as well as I did. Mr. Power was 813
in my employ at the time. I remember of writing of the shanty "improvements" but do not remember of writing "Homestead" because we never intended to take a homestead.

Witness here shown the stake which was introduced in evidence by the plaintiff and testifies that he does not recognize any of his own writing thereon.

I don't know whether that stake came from the land or not. I do not recognize the writing on the stake as my own. I had the arrangement with Mr. Eaton before the improvements were made. The arrangement was made in Eaton's office in Duluth before we went up to the land. The understanding was that I should receive a
814 1-3 interest in the land $50 in cash, all provisions and tools necessary to make complete the improvements. Mr. Eaton furnished the money as agreed, also tools and provisions after making the arrangements with Eaton I made one with James H. Powers I had intended to employ Warren Miller of Ontonogon, Mich., and make the contract with him but he could not be got at the time and so I took James H. Powers. I made the arrangement in Welch's saloon with Power before we left Du-
815 luth to go to the land. I told him I was promised a 1-3 interest in these lands from Eaton for going to make the improvements, and to get that 1-3 interest we would have to go on the land, stay sometime and make improvements and when everything was settled I would divide the one-third with him and Clement, who was my partner when we made the discovery that the land was valuable. He agreed to the arrangement and went with me and assisted in making the improve-
816 ments under that agreement. I furnished him $20 to buy his outfit with to go there. Before starting I took him to Eaton & Merritt's office and introduced him to Leonidas Merritt. We inquired for Mr. Eaton but could not find him. I was present when Power talked to Mr. Merritt, Mr. Eaton's partner.

Q. Did he not state to Mr. Merritt in your presence that he understood from you that you

were to receive 1-3 interest in the land and that you had agreed to divide that 1-3 with him and Clement.

Objected to as leading and suggesting the answer to witness.

A. He did. Mr. Richard Fagan came up on the land while Power, Clement and I were making 817
the improvements. He came there twice. The first time he came he stated what he came for. He said he came to get the description of the land and to assist in making the improvements. He stated that Mr. F. W. Eaton sent him and he brought a letter from Eaton at the same time. The letter was addressed to me, Edward Byrne. Mr. Fagan worked about two days. It would take one man two days to cut the logs alone for each shanty to build the 818
shanty with, and one man could by no means handle the logs in erecting the shanties. The shanties were from 7 to 9 feet high. When Mr. Fagan came the second time Mr. Merritt came with him and I had no conversation with Fagan. We all left the land and came down to Duluth together. There were Mr. Merritt, Mr. Fagan, Power, Clement and an Indian or two and myself. The Indians were packers, the improvements were all complete when we left there. I did not take 819
Power out one side just before leaving the land and tell him what he was to get. He fully understood the whole matter before we left Duluth, in the first place. The first place we went to after returning to Duluth was Freidenburg's restaurant (called the Parlor saloon) and got our dinner. We then proceeded directly to the office of Mendenhall & Haines; Power, Clement, Merritt, Eaton Fagan and myself went there together, and we all

got our matters fixed up and the papers made out before we left there. I don't know whether Power was there all the time or not. Mr. Power was sober all the time he was there engaged in making out the papers.

Witness here shown Exhibit "C" and said that
820 he recollected Mr. Haines reading an affidavit containing the statement like the one contained in this. I signed this exhibit "C" and identify my signature. The paper I refer to as having been read over by Mr. Haines was made out by him and dictated by Mr. Eaton and was sworn to by Jas. H. Power, Edward Byrne (myself) and Jos. Clement.

Q. Examine Exhibit "C" and state whether the contents of it are true or not? A. They are
821 true. I believe Mr. Power fully understood the import of the exhibit "C" before he signed it. I and the other parties all received our pay from Mr. Eaton according to the agreement made before going up there to make the improvements.

CROSS EXAMINED.

822 Mr. Eaton was never on those lands to my knowledge. Mr. Eaton directed us to go and make good substantial improvements, in the same style as are made by pre-emptors and homesteaders in this country. He did not state specifically how much to clear but gave a general direction. I don't know whether Orillie Stram was on the land or not. I never saw any half-breed woman there. I did not know or had not heard of any such woman at that time. The first time I ever heard

Mrs. Stram's name mentioned was in Haines' office when we made the affidavit. When I made the arrangements with Mr. Eaton I understood that he had the scrip under his control. Either had it in his possession or had made arrangements for it. I had discovered the land about three weeks before going up to make improvements. Clement was with me when I found it. I 823
was then at work for the Minnesota Iron Company. Clement and I were what are called mineral explorers at that time, and had been in the employ of the company eighteen months at that time.

824

RE-DIRECT.

I run the biggest part of all the lines about this land. I run the line through the center of the section east and west. I run a true line east from the 1-4 post on the west side of section 30, run it east 1-2 mile. I did it in order to locate the land and find out where to place the improvements. This was before the survey of the interior of the township. I used a "Gurley's Dial Compass." I 825
tested the accuracy of this line by retracing the range line for half a mile between sections 11 and 12. I found the compass correct and that my line was correct east and west, and a right angle line with the range line. The improvements were made north of this east and west line that I ran. They were two hundred paces north of the line. I know something about McPherson who made a subsequent survey. I do not consider him a

competent surveyor, or any surveyor at all. I have worked under him on surveys.

Q. What do you know about his making surveys which were inaccurate before?

Objected to as irrevelant and immaterial.

A. I don't recollect any. I consider the sur-
826 vey I made accurate and made the improvement acting under that survey in good faith and believe they are on the land.

RE-CROSS.

The land in question shows signs of iron, and was the reason that I considered it valuable. I
827 will not say positively that I did not write "Homestead" on my shanty, or on the stakes.

Q. Do you say you did not write that on this stake in evidence? A. I cannot swear to anything about that stake.

Q. Now I want an answer distinct to this question "do you swear that you did not write this writing that appears on the stake heretofore introduced in evidence? A. No.

Q. Give me your opinion whether it is your
828 handwriting or not? A. I believe it is my handwriting.

Q. Particularly examine the word "Homestead" and say if that is your writing? A. I can't say, but think it is all my writing.

Q. Why was it not just as easy for you to write the name of the scripee for whom that land was being taken upon those improvements and stakes as to write your own name and Power?

Question by Register.

Q. For what purpose did you put these stakes there with your names? A. To keep other explorers and claimants off under our orders from Eaton and mislead and keep others off the land.

Preceding question objected to as frivolous. Objection sustained on the ground that witness has already testified that at that time he had no knowledge of the name of the scripee and that the words written on the stake were written for the purpose of misleading others who might wish to squat on the land. 829

Plaintiff's attorney excepts to the ruling on the ground that it is arbitrary and not within the power of Register and Receiver under the rules promulgated by the General Land Office for their government. 830

Q. You understood at the time you were making these marks that you were making this improvement under Sioux half-breed scrip, did you? A. Yes.

Q. Who did you understand owned this scrip? A. Frank W. Eaton.

Q. Why did you not mark the stakes and improvements on the land with Frank W. Eaton's name? 831

Same objection and same ruling as in the foregoing question.

Same exception by plaintiff's attorney.

Q. You thought then did you, that it would be better to serve your purpose to mark those improvements falsely than truly?

Same objection, ruling and exception.

Answer to question by Register:

I was aware that the lands were valuable four years before the improvements were made, but had not made a careful examination of them until about three weeks before making the arrangements with Mr. Eaton.

Q. Did you mark these lands as you did to
832 mislead any person who might have an interest in the land by settlement or otherwise or did you as being the first party who made the improvements thereon mark them to mislead and keep others off and thus protect the interests of Mr. Eaton who employed you? A. I marked them to protect Mr. Eaton's interests and keep others off as I was the first party to make improvements and I thereafter walked about the lines for days with a revolver to protect Eaton's interests and keep
833 others off.

Q. Was Lonstorf there while you were there? A. Yes. Mr. Hartmann was there also. The latter was there 10 or 12 days before Fagan & Merritt came. It was before Fagan came the first time. I had no talk with Hartmann that I recollect of about selling to him although I will not say that I did not have any such talk. I heard Mr. Hartmann's testimony.

Q. Did you not tell him as he said that if par-
834 ties were not there that day whom you expected you would treat with him for sale or words to that effect? A. I had nothing to sell. I don't remember of telling him so. I don't remember whether I told him so or not. I will not say whether I did or did not tell him so.

A. I can't say how many days I was there before Fagan came the first time but think about 15 days.

A. About the same length of time afterwards we came down.

A. We were about six days coming down.

A. We left here to go up there about the middle of May, 1883.

A. Were about six days going up.

A. We were on the land not quite a month 835
I think.

A. The improvements were not completed when Fagan left there the first time. My shanty was completed but Powers' was not.

A. Powers' was completed afterwards.

A. The door was hung on the inside and it fit as near as they generally fit in the woods.

A. There was a jam to the doorway.

A. The roof part that was covered with 836
shakes was a portion on each end, say a foot or 18 inches.

A. The shanties were chinked but not mossed.

A. I do not know whether Power drank any after he came in town that day at the Friedenburg's restaurant (Parlor saloon) or not.

A. I don't know whether he and Clement went across the street from Mendenhall & Haines' 837
office and got some drinks or not.

A. We were all three sworn to the affidavit in the same way, at the same time and by the same officer.

Q. How was that done? A. As near as I can recollect the affidavit was read over by Mr. Haines who asked if we understood it. We held up our right hands and swore to it and signed our

names. Then he went to the desk and put his stamp on it.

A. I saw Power hold up his right hand. By window I mean a hole cut in between the logs; we had no glass windows.

A. The contents of the letter from Eaton
838 which I spoke of were to the effect that he had been disappointed in getting the description of the claims from the man he had sent up there before, and sent Mr. Fagan up to get another description and assist us with the work. That was the substance of it.

Q. What was your idea in getting Power to go with you to improve this land if you already had Clement as a partner? Why did you and Clement not do it without taking a third man? A.
839 Because Clement had a pre-emption filing in 62, R. 16, at that time, and was well acquainted in the country.

Q. How did that make any difference with his assisting you alone without Power's help in making these improvements on the land that you were improving so that Eaton might get them with Sioux scrip? A. Because the parties that I was suspicious of would take advantage of the knowledge they had of Clement having a
840 pre-emption and go on the land in opposition to him sooner than they would against a man who had no filing.

Q. Did not Power have a pre-emption claim too? A. I was not aware that he had at the time I employed him in Duluth.

Q. Do you pretend to say that the fact that a man had taken a pre-emption claim would thereafter prevent him taking a homestead and that

was the reason why Clement could not go on this land and make improvements with you?

(Objected to for the reason that witness has not testified to anything of the kind included in the question but has explained his very reasons.)

A. I cannot answer the question.

841

RE-DIRECT.

When Fagan left for Duluth the first time the improvements were all completed except hanging the door and cutting a window. After he came there he assisted in completing them up to that point.

A. Speaking of Hartmann and what I told him I will say that many people came there making propositions to me and I had to tell them anything I could devise to get rid of them and get them to leave me alone. 842

EDWARD BYRNE.

Subscribed and sworn to before me this 15th day of April, 1886.

R. N. MARBLE,
Register.

843

Richard H. Fagan, being duly sworn, says, I am 28 years of age. I make Duluth my home when not at work in the woods. I have been here since the summer of 1882. I am acquainted with Frank W. Eaton. Have known him since the summer of 1882. I know where the land in question

is located I have been on it. I was there twice during 1883. I went there for Frank Eaton and by his direction. I went then there first time to get the minutes of the land and also to help Edward Byrne make improvements. When I was returning I met Mr. Jas. H. Power going to the land from Vermillion with supplies, and had a conversation with him. He told me he was helping Ed. Byrne make improvements on the two locations. He did not say who it was for. I helped Ed. Byrne build a shanty, put up the walls and put on a roof. The roof was made of shingles (split Norway) and cedar bark and birch bark. Ed. Byrne and I put the shingles on. They were put on both ends of the shanty 17 or 18 inches running from the edge of the roof to the top. They were put on to hold the bark together and cover places where the bark did not come together. I saw the same shingles that were on these shanties, after Hyde and McDonald went on to the property. I saw that the shingles which were on Byrne's shanty had been taken off and put down to make a floor at a water hole. I also saw that the shingles which were on the house Powers' built were taken down and used for the same purpose. The improvements on the location were all complete except the hanging of a door and cutting of a window hole in one shanty. When I left there to come to Duluth the first time I had a memorandum of the improvements and how they were made which I took to Mr. Eaton when I came down. It was in pencil and made by myself. I have the memorandum yet and can produce it. The original memorandum is torn and cannot be deciphered except by one who wrote it. I have a copy here which I have copied off.

844

845

846

Q. Can you state from your own memory without the aid of the memorandum what improvements you reported to Mr. Eaton? A. I can.

Q. State them?

Question withdrawn.

A. When I left the land to come and report the improvements to Mr. Eaton the following improvements were on the land. Two shanties (one on each location) with good roof, door and window, the window was a hole cut in without any glass, in Byrnes' shanty. And 1-2 an acre cleared on each location. Byrnes' was pretty well cleared off, and Powers' the same. 847

Q. Why do you call one claim Byrnes' and one Powers'? A. I speak of them thus to designate the improvements on each location. I speak all the time of improvements that Byrne made for Eaton and what have been alluded to in the testimony as Byrnes' shanty and Powers' shanty made by them in 1883, to locate the scrip in question. 848

A. I also afterwards went up to the land with Mr. Merritt to get the parties to come down.

A. The matter of the agreement that had been made was all talked over the Saturday evening before we started down on Monday morning.

A. Mr Power was present and took part in the conversation. 849

A. Mr. Merritt, Byrne, Clement and Powers and myself sat by the camp fire and talked the matter over as arranged in Duluth before Byrne and Power went up in the first place. Mr. Merritt, Byrne and Power all talked of the arrangement Eaton and Byrne had made previously in Duluth, they all seemed satisfied with it. The quantity of interest was talked over to the effect

that Byrne was to receive 1-3 interest. He also agreed to give Clement and Power 1-9. This was mentioned as the interest that had been talked and arranged by Byrne and Eaton in Duluth. Powers said that he was satisfied and that he was ready to go to Duluth as quick as we could. Previous to this time I had run that line through the
850 centre east and west through section 30. I run east from quarter post in the west line of section 30. I went to the N. E. section 25-63-12, traced the range line south to the 1-4 post between section 25 and 30, then run east 1-2 mile, found the improvements located north of the line then continued on 1-2 mile farther and found the location of the second improvements north of the line I was running, both improvements were located 200 paces north of the line the paces run about
851 5 1-2 to the rod according to my pacing the line I was running being the center line of the section east and west. This was before the government survey of the interior of T. 63, R. 11 W. I run the line with a pocket compass that I have used in tracing government surveys for years before, and have always found accurate and correct in every point.

Q. Have you been in section 30, T. 63, R. 11
852 W. since the government survey has been made and is the 1-4 post of the west side of section 30, 63, 11 W. the same 1-4 post as was made for the east side of sections 25 and 63, R. 12 W.

A. It was the same the last time I saw it.

Q. And in running east from that quarter post are the improvements on the land which are described by metes and bounds in the location of the scrip? A. They are.

A. I know McPherson, the person who testified to having made a subsequent survey of this line.

A. Have known him since the fall of 1882.

A. I know him to go by the name of a surveyor.

Q. Do you consider him a competent surveyor. 853

Objected to because the witness is not competent.

A. I do not. I traced his work several times and found his section corners an eighth of a mile out of the way. This I know for a fact and can bring witnesses to prove it.

(Objected to as not responsive to the question.)

When I came down from the land the second time Merritt, Byrne, Clement and Powers were with me. Powers was sober on the way down. He was dead sober when we started and dead sober when we got here. We came from Northern Pacific Junction to Duluth. When we got here we went to Friendenburg's restaurant (Parlor saloon) direct and got dinner all of us. From there we went to Mendenhall & Haines' office. After we went to that office none of us left there until the papers were all made out except Mr. Eaton, who went out a short time to get some papers. Mr. Powers was entirely sober while in there. 854 855

Look at this paper, Exhibit "C" and see if you know it? A. I did not look over the paper there but I know that Clement, Byrne and Power signed just such a paper as that. The contents were read over to all three of the parties in my presence. It was also sworn and signed in my

presence. I was familiar with the facts set forth in the paper and knew at that time and how that they are true.

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856 CROSS EXAMINED.

April 16, 1886.

I am not a civil engineer and surveying is not my occupation. I have studied surveying a little in school but not enough to follow it as my business. I saw these shakes that were put on to the shanties built by Byrne and Power, last June, 1885. I cannot say how many of those that were once on the roof, I saw in June, 1885, I think about
857 2 or three dozen at both locations I have described. In 1883 there was in the neighborhood of 3 or 4 dozen, on each roof of these shanties. I saw from 1-3 to 1-2 of those same shakes at the water holes in 1885. I do not think the tops of the roofs after the shakes had been removed show just where the shakes had been placed.

Q. Are you positive about this testimony as to the shakes you saw there in 1885 as you are about any of the rest of your testimony? A. I
858 am as positive as to these shakes.

A. In the talk had at the camp the Saturday night before we all started for Duluth Powers said that he was glad and pleased to see Lon Merritt on the location. So that Byrne and him could get back to Duluth. He talked two or three hours and said he had been working there with Byrne making the improvements and that they had got them complete.

Q. What else do you remember that he said?
A. He then talked with Lon Merritt and Byrnes and I did not listen to them.

A. I heard Powers speak of his interest in the land that night.

A. He said, is this right Mr. Merritt. When Byrne gets his 1-3 we will get ours with him? 859

A. I do not remember that he said anything else. I heard more conversation on the part of Power after that before we came to Duluth. This was on the land on the following Sunday. We were hanging the door in the shanty built by Byrne. He said we will all be on our way to Duluth in the morning. Power and I hung the door in the shanty.

A. He also said on his way down "Byrne is going to get an interest in this and I am going to 860 get an equal interest with him and can't we arrangs some way to form a stock company with Eaton & Merritt. That is all on that point at that time.

A. As we came down the St. Louis River to Knife Falls and Northern Pacific Junction he talked on the same subject and in the same way. At Northern Pacific Junction and Duluth he talked about the same matter. I do not recall his words except that he talked of a stock company. Power 861 never drank but one glass of liquor before going to Mendenhall & Haines' office and that was a glass of beer at the restaurant. He never left the office there until the papers were signed, and drank nothing during the time. The papers were signed about 2 1-2 hours after we came to Duluth.

Question by Receiver:

A. Mr Power had no drink before we got to Duluth that day. We came together to Duluth, and went all together to the restaurant, took dinner and then went direct to Mendenhall & Haines' office all together.

Q. Did you keep such watch of him that you
862 know that he did not go out of that office until the papers were signed? A. I kept no more watch of him than I did of the others and I know that no one left the office prior to the signing of the papers except Frank Eaton who went out a moment to get some papers.

A. When I met Power as I was coming from the land the first time he told me he was working for Byrne and that he was then taking in supplies
863 to him. That was all on that subject.

A. The marks were on the improvements when I was there the first time, on the shanty and on the stakes.

A. On the shanty, on the third log from the ground on the left hand as you go in the door was "Edward Byrne's improvements. (Description of land.) (Date of settlement and improvement commenced.) (Settlement continued and date.) Then
864 (Again continued and date.) This was written in pencil. The second time I was there I think Hartmann's and Harvey's names were on the shanty. The word "Homestead" was not written there in that place. It was not any place else that I saw. I have seen the stakes also and Jos. Clement and I wrote on them. I wrote in my own hand writing. I mean by water hole a well they dip up water.

RE-DIRECT.

I am following exploring for a living and have for over five years. I put all my time in looking government land, locating and estimating, in Duluth and St. Cloud district and St. Croix River. I have had experience in running lines and looking up posts. It is part of my business to get corrections and look up corners and meander p
A man in my business has to be very particular in getting the proper corrections and all posts and corners in order to make correct locations and a man in my business gains a great deal of knowledge of surveying by this practice. 865

RE-CROSS. 866

I generally run my lines with a pocket compass when locating land and take my distances by pacing. I find the boundary lines by going to the corner of a section then running east or in any direction I may desire to circumscribe, or to locate any quarter post, and in subdividing a section I go from quarter post to quarter post or from quarter post to corner.

R. H. FAGAN.

Subscribed and sworn to before me this 16th day of April, 1886. 867

R. N. MARBLE,
Register.

James H. Finn, being sworn, says, I reside in Duluth, Minn., (Rice's Point Division). Saloon

keeping was my last occupation. In 1884 and 1885 I was an explorer. I was at the Byrne shanty in August, 1884. I did not stop there at all, just went past. The last time I was there was in December, 1885. I was then also there in July, 1885. I may have been there a dozen times altogether.

868 I did not notice the Byrne and Power shanties particularly. I do not know what the Byrne and Power shanties are of my own knowledge. I have been told. I know where the Hyde and McDonald shanties are. The other two shanties that I have been told were the Byrne and Power shanties were Byrnes about 50 feet from Hydes and Powers, about 100 feet from McDonald's. I never saw any shakes around there at any time.

Question by Register.

869 Q. Do you know of there being any such place as Fagan has testified to as being a water hole? A. I don't. There might have been a dozen there and I not know anything about it.

Q. Was there any shakes at any time you were there laid down as a floor to any well, water hole or watering place near Hyde or McDonald's shanties or either of them apparent to you? A. No sir.

870 ———

CROSS.

Q. Do you know whether there was any shakes there or not? A. I do not. I did not see any. There might have been some around there that I did not know anything about.

Defendant moves to strike out the testimony of Fenn on the ground that the witness does not

profess to know anything about it, and that it is immaterial and that the whole of that kind of evidence offered by the witness is frivolous and not competent to the issue.

JAMES H. FINN.

Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE, 871
Register.

Argus McDonald, recalled in rebuttal, says:

Q. State whether or not at any time since you went on to the land you are residing on in August, 1884, there had been any shakes around those 872
premises that were made previous to your going there? A. No sir.

A. If there had been any I certainly should have seen them I think.

A. I have frequently been over to Hyde's place.

A. There were no shakes around there either.

A. If there had been any there I would have seen them as I have worked all around there. 873

A. There was no water hole around there floored with shakes. I had a water hole in my place timbered, but not with shakes.

A. There was no water hole near Hyde's place, but a running creek. My water hole was fixed with timber about 2 inches thick which I cut myself. I could not get water out of this hole except in the fall and spring.

A. I usually get water from the creek. The logs in Powers' shanty are all the way from 8 inches to a foot in diameter, but in the Byrne shanty they were not so large.

A. I never measured the heights of the shanty and do not know. A. A man could cut the timber (fell the trees and cut it up) for either
874 shanty in half a day.

A. I could put up the Byrne shanty alone, but could not very well put up Power shanty alone as the timber is larger.

CROSS.

Q. Is there not a dug well from 25 to 30 paces
875 west of your shanty?

A. There was a hole there but it was not a dug hole.

A. It is a hole that I have got water from in wet seasons. This is the one that I timbered up.

A. It is hardly a foot deep.

A. It is a mud hole.

A. I could not see any rocks about the holes.

A. It is near the foot of an elevation which
876 I could not call a bluff, and I don't know what kind of a bottom it has. The timber in the Byrne shanty is from 5 to 10 inches in diameter.

A. All I know about there not being any shakes on the roofs of the Byrne and Power shanties was that I saw none when I went there in 1884.

Q. Did you ever make an examination of those premises solely for the purpose of ascertaining

whether there was any shakes around there or not? A. I did not.

Q. Did you when you went there have any instructions from anybody to ascertain whether there was any shakes there. A. I did not.

Q. Was there not a good deal of rubbish around there. A. I saw nothing but tamarack bark. 877

Q. Will you positively swear that there was no shakes when you went there, around either one of those shanties or around the premises? A. There was none around the clearings or around the improvements.

A. Norway pine shakes would make good kindling if they were dry and any woodsman that came around would be glad to get them for kindling if they were dry. 878

RE-DIRECT.

A. There were roots at the water hole.

RE-CROSS. 879

A. I timbered my well with poplar cut in strips a foot and a half long. Two inches thick and about two inches wide.

ANGUS McDONALD.

Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE,
Register.

REBUTTAL.

Thomas W. Hyde, recalled, says:

I have never seen any shakes on the shanty built by Byrne or around there or around the water hole alluded to by Mr. Fagan. I get my water right south of my shanty out of a running creek.
880 I never had any well or water hole more than I cut through the ice when the creek is frozen. I never used any shakes at all for any floor around that. There could not have been any shakes around my shanty or my creek without my seeing them. The shanties are about 45 or 50 feet apart. All that I saw that could be split around there was what was split for a door and table. I did not see any shakes around the Power shanty either. There was none on the roof which was cov-
881 ered with bark. There was no shakes around there that I could see. I was over there frequently. If there had been any shakes around there I would have seen them. McDonald gets his water out of the same creek as I do only higher up the same.

Q. What sized logs is the Byrne shanty built of?

(Objected to as not rebutting evidence and
882 not material to any evidence in the case.)

A. They will average about 8 to 10 inches, 14 and 16 feet long, red pine, jack pine, Norway and tamarack.

A. The shanty is about 5 feet 10 inches high.

A. A man I should consider could cut the logs inside of a half a day.

A. Two men could handle them easily.

CROSS.

A. I say that the shanty is about 5 feet 10 inches high.

Q. Will you swear positively that in giving your testimony before here, you did not swear that the shanty was about 7 feet high, the log part I mean? A. Not to my knowledge I did not.

883

Q. Will you swear positively that you did not so testify. I want an answer, yes or no? A. I believe I did not say so.

Q. Do you want yourself placed upon record here as testifying under oath ,that a man could fell the trees, cut them the proper lengths, where the trees would average 8 to 10 inches in diameter, according to your testimony for that shanty of Byrnes in less than one-half day? A. Yes sir, I can cut them in less than half a day.

884

A. What might take one man half a day might take another longer.

Q. Is there not a dug well from 25 to 30 paces west of McDonald's shanty? A. Not to my knowledge. There is hole there between some rocks.

Q. Are you as positive that there is not a dug well in the locality I have spoken of as you are to any testimony you have given since you have attended this case before the Register and Receiver? A. I am.

885

Q. When did you go there to reside? A. In August, 1884.

A. When I went there part of the roof was gone from the Byrne shanty.

A. I do not know what covered that part of the roof that was gone.

A. I don't know whether it was shingles of bark on that part.

Q. You have no knowledge as to what the roofs of those shanties were covered with when they were built other than what you say when you went there in August, 1884? A. Nothing but what I saw on it when I went there in August,
886 1884.

A. My shanty is on a hill and about 45 or 50 feet east of the Byrne shanty.

A. I have to go down the bluff about 40 or 50 feet to get water from the creek. It is about 30 paces to the creek but the bluff is about 45 or 50 feet high.

A. I got my water there instead of providing a well.

887 Q. Did you not testify before in this case that there was no table in Byrnes' shanty? A. I did not.

RE-DIRECT.

A. The Byrne shanty is about 7 feet high at the peak.

THOMAS W. HYDE.

888 Subscribed and sworn to before me this 16th day of April, 1886.

R. N. MARBLE,
Register.

Plaintiff's attorney gives notice that he will apply for an order to take testimony by deposi-

tion of Orillie Stram, Jac. Raffauf, Thomas Ross and Jos. Clement all of whom are outside of the State of Minnesota. And rests.

It is stipulated and agreed upon that this testimony shall be considered in determining the validity of both locations of scrip, 19 D. and 19 E.

889

Defendant offers in evidence two powers of attorney from Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, Wisconsin, to Leonidas Merritt, to convey land, one under and by virtue of Sioux or Dakota half-breed scrip No. 19 D., for 160 acres, issued to Orillie Moreau, now Orillie Stram, the 890
other to convey land under and by virtue of the same kind of scrip, No. 19 E.

(Objected to as irrelevant and immaterial as it already appears in evidence that they were not filled up with the name of any attorney at the time of the execution thereof, nor until some time after the scrip and accompanying papers were purchased by and delivered to Frank W. Eaton.)

Marked Exhibits "T" and "J" and received 891
and filed. Defendant also offers in evidence a printed map of T. 63, R. 11 W., 4th P. M., Minn., accompanied by and attached to a profile of McPherson's survey of the center line of section 30, T. 63, R. 11 W., according to McPherson's evidence and copy of the county surveyor's record.

Received marked Exhibit "K." and filed.

Defendant rests.

COPY OF EXHIBIT 1.

"H."

M. C. S. (10c revenue stamp.) H. W. S.

Doc. Case 681.

DEPARTMENT OF THE INTERIOR,

892 GENERAL LAND OFFICE,

Washington, D. C., October 14, 1898.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Exhibits "A," "B," "C," "D" "F," "G," "H," "I" and "J," in the case of Thos. W. Hyde et al., vs. Frank W. Eaton et al., involving lands in Sec. 30, T. 63 No. R. 11, Duluth Land District, Minne-
893 sota, are true and literal exemplifications of the originals as they appear of record on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,

Commissioner of the General Land Office.

(United States General
894 Land Office.)

PRAIRIE DU CHIEN,
April 1, 1886.

Mess. White & Reynolds,

Gents.—Mr and Mrs. Stram are not coming up to your place, because Mr. Eaton has been here

and received a Deed from Mr. and Mrs. Stram for the scrip sold to Mr. Smith about 1 1-2 years ago.

I think this will settle all further trouble.

Resp. yours,

JAC. RAFFAUF.

Indorsed on the back: "Exhibit "A." Filed Apl 6, 1886. 895

(4-535.)

896

DECLARATORY STATEMENT FOR CASES WHERE THE LAND IS NOT SUBJECT TO PRIVATE ENTRY

I, James Henry Power of St. Louis Co., Minn., being a single man, over 21 years and a naturalized citizen of the U. S., have, on the 15th day of July, A. D. 1882, settled and improved the S. 1-2 of N. W. 1-4 and S. W. 1-4 of N. E. 1-4 and N. E. 1-4 of S. W. 1-4 quarter of section number 17, in township number 59 N., of range number 17 W., in the district of lands subject to sale at the land office at Duluth, Minn., and containing—160— acres, which land has not yet been offered at public sale; and thus rendered subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841. 897

Given under my hand this 2nd day of Oct., A. D. 1882.

JAMES HENRY POWER.

In presence of

Ag. M. DONCLE.

(9402-10 M.)

898

Indorsed on the back: "James Henry Power. No. 2929 Unoff.

Filed Oct. 2-82, by J. Grady.

"Exhibit B."

899

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Edward Byrne, James H. Powers and Joseph Clement, of said county and state, being first duly sworn, make oath and say that they have made good and substantial improvements on the following described land, to-wit: In sections twenty-nine (29) and thirty (30) in township sixty-three
900 (63) north of range eleven (11) west of the 4th principal meridian, located under and by virtue of Sioux half-breed scrip No. 19, Letter "E" for 160 acres and by No. 19 Letter "D" Sioux scrip, issued to Orillie Stram (formerly Orillie Moreau) for and under the personal direction of Frank W. Eaton, attorney in fact of said Orillie Stram and Roman Stram, her husband, and have made no improvements on said land either for themselves, or any

other person, intending to claim the same under the Homestead or Pre-emption law, or for any purpose whatever, other than above described, and to our certain knowledge there is or has not been any improvements made on above described lands, by any other person or persons.

EDWARD BYRNE,
JAMES H. POWER, 901
JOSEPH CLEMENT.

Sworn to and subscribed before me
this second day of July, A. D. 1883.

CHAS. R. HAINES,
Notary Public, St. Louis Co., Minn.
(Notarial Seal.)

902

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

James H. Powers, being duly sworn, deposes and says that he is well acquainted with the parcel of land included in the following described boundaries, commencing on quarter post on east side of section No. twenty-five of township No. sixty-three north of range No. twelve west in the district of lands subject to entry at Duluth, Minnesota, thence north 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence south 80 rods, thence east 80 rods, thence south 80 rods, thence west 240 rods to place of beginning, being unsurveyed land, attempted to be located under Sioux half-breed scrip No. 19 E. issued under the Act of Congress, approved July 17, 1854, 903

entitled "An Act to authorize the President of the United States to cause to be surveyed the tract of land in the territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dacotah or Sioux nation of Indians and for other purposes" in the name of Orillie Moreau, June 16th, 1883, and the other tract or parcel of land included with-
904 in the following boundary lines commencing 240 rods east of the quarter post on east side of said section No. twenty-five of township No. sixty-three north of range No. twelve west, aforesaid, thence south 80 rods, thence east 80 rods, thence north 80 rods, thence east 80 rods, thence north 160 rods, thence west 80 rods, thence south 80 rods, thence west 80 rods, thence south 80 rods to the place of beginning, being unsurveyed land, attempted to be located under Sioux half-breed scrip
905 No. 19 D., under said hereinbefore mentioned Act of Congress, in the name of Orillie Moreau, on said 16 day of June, 1883, and was so acquainted with said parcels of land June 16, 1883. That this deponent, Edward Byrne and Joseph Clement, made the improvements and all the improvements made on said parcel of land, commencing the same on or about the second day of June, 1883, and closing the same on or about the twenty-fourth day of June, 1883, that neither this deponent nor
906 said Byrne or Clement were in the employ nor did they make said improvements in the service or under the personal supervision or direction of said Orillie Moreau, nor of any agent or attorney of hers, nor was said Orillie Moreau or any other Sioux half-breed Indian, at any time while said improvements were being made, upon said parcels of lands nor was there any agent or attorney of said Orillie Moreau in any manner con-

cerned in making said improvements on said parcels of land. Deponent further says that at the time they made said improvements, he and said Byrne made them intending and purposing this deponent to take the second above described parcel of land as his homestead and said Byrne to take said first above described parcel of land as his homestead, under the Act of Congress commonly known as the homestead law, and further, deponent says not. 907

JAMES H. POWER,

Subscribed and sworn to before me
this 8th day of August, 1884.

CHARLES J. BOWER,

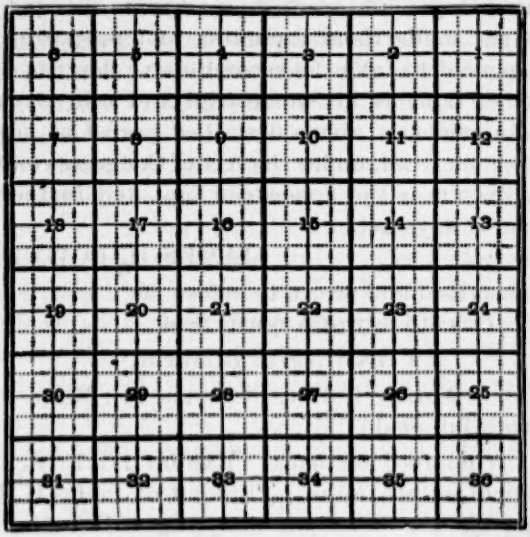
Notary Public, St. Louis Co., Minn.
(Notarial Seal.)

(Indorsed on back) "Exhibit D., U. S. Land Office, Duluth, Minn. Affidavit of James H. Powers, Thomas W. Hyde and Angus McDonald vs. Orillie Stram, nee Moreau. Filed Oct. 9th, 1884, J. R. Carey, Reg." 908

909

Township No. 63 N., Range No. 11 W., 4th P. M.

910



911

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

U. S. LAND OFFICE,
Duluth, Minn.

912 In the matter of the application of Orillie Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19 Letter D., for one hundred sixty acres of land.

Frank W. Eaton being duly sworn on his oath, says that he is the attorney in fact of said Orillie Stram, and is duly authorized by her to locate the scrip above described, and that he has so located the same as such attorney in fact on

the following described unsurveyed real estate within the limits of the Duluth Land district, to-wit:

Commencing at the quarter post on the east line of section twenty-five (25), town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence north on said section 913
line 80 rods (80), thence east eighty (80) rods, thence north eighty rods (80), thence east eighty (80) rods, thence south eighty (80) rods, thence east eighty (80) rods, thence south eighty (80) rods, thence west two hundred and forty (240) rods to the place of beginning, which said property when surveyed will be described as follows, to-wit: The northeast quarter of the northwest quarter (N. E. 1-4 of N. W. 1-4) the south half of the northwest quarter (S. 1-2 of N. W. 1-4) and the 914
southwest quarter of the northeast quarter (S. W. 1-4 of the N. W. 1-4) of section thirty (30) in township sixty-three (63) north of range eleven (11) west of the fourth principal meridian. That he has as such attorney built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and windows, and had cleared ready for cultivation one-half acre of said land. That said improvements were made under the personal 915
direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this
16th day of June, A. D. 1883.

J. R. CAREY,
Register.

Scrip Certificate No. 19 D. Register and Receiver's No. .....

SIOUX HALF-BREED RESERVE AT LAKE PEPIN

Act of July 17, 1854.

LAND OFFICE,

916 Duluth, Minnesota, June 16, 1883.

We hereby certify, that the attached half-breed scrip, No. 19 Letter D., was on this day received at this office from Orillie Stram, of Crawford county, State of Wisconsin, by F. W. Eaton, her attorney in fact.

J. R. CAREY,
Register.
W. W. SPALDING,
Receiver.

917

I, Orillie Stram, formerly Orillie Moreau of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the following unsurveyed tract of land, designated as follows, to-wit: Commencing at the quarter post on the east line of section twenty-five (25), town sixty-three (63),
918 north of range twelve (12) west of the fourth principal meridian, thence north on said section line eighty rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence south eighty rods, thence east eighty rods, thence south eighty rods, thence west two hundred and forty rods to the place of beginning, containing one hundred sixty acres, in the district of lands, subject to sale at the Land Office at Duluth, Minn.,

in satisfaction on the attached scrip No. 19 Letter D., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, by (Seal.)

Attest:

F. W. EATON,

Her Attorney in Fact.

919

LAND OFFICE,

Duluth, Minn., June 16, 1883.

We hereby certify, that the annexed scrip No. 19 Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location. 920

J. R CAREY,

Register.

W. W. SPALDING,

Receiver.

921

(Indorsed on back.)

Land Office, Duluth, Minn., June 16, 1883.

Richard Fagan being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same, on the tenth 10th day of June, 1883,and that there was no person living on the same at that

time, nor were there any improvements on it, except those of Orillie Stram, nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me
this 16th day of June, 1883.

J. R. CAREY,
922 Register.

Scrip Certificate No. 19 D. Register and Receiver's No. 188.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

923 Act of July 17, 1854.

LAND OFFICE, July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 Letter D., was on this day adjusted by Orillie Stram, formerly Orillie Moreau, St. Louis county, State of Minnesota.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

924

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the.....tract of land, designated as follows, to-wit: Lots number three (3), five (5), and six (6), and southeast quarter of northwest quarter of section thirty (30) in town-

ship number sixty-three (63) north of range eleven (11) west of 4th principal meridian.

(The above location is hereby made to adjust to the U. S. survey of the location made June 16th, 1883, upon unsurveyed land of half-breed scrip, No. 19 Letter D., issued under the Act of Congress July 17th, 1854.) 925

Containing one hundred sixty-one and 67-100 acres, in the district of lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip No. 19 Letter D issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, (Seal.)
By F. W. EATON, 926
Her Attorney in Fact.

Attest:
N. B. THAYER.

Cancelled by Dept. Decision of Feby. 18, 1889, affirming ours of March 7, 1887.

See to R. & R., Feby. 19, 1889.

E. S. E.

927

LAND OFFICE,
July 21st, Duluth, 1885.

We hereby certify, that the annexed scrip, No. 19 Letter D., has been this day adjusted on the tract of land, as described within, containing 161. 61-100 acres, agreeably to the Act of Congress

of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.

E. G. SWANSTROM,
Receiver.

928 Excess receipt No. 7762 for $1.61-100 acres at $1.25 per acre, $2.00.

(Indorsed on the back as follows.)

See to James A. George, April 18, 1895.
Land Office,..... 187 33332
See to James A. George, April 30, 1895.
A. M. H.

929 being duly sworn says: I am acquainted with the..... ....tract
See to R. & R., May 18, 1895, telegram, Div "A."
A. M. H.
of land described within, by personal examination of the same
See to Geo. J. Lonstorf, May 6 and 18, 1895,
A. M. H.
on the .....day of.....187... and that

930 there was no person
See to R. and R., Aug. 2, 1895, enclosing scrip.
A. M. H.
living on the same at that time, nor were there any improve-
See to Burdette Thompson and Low, Aug. 5, 1895.
A. M. H.
ments on it except those of..... nor any person claiming

See to James A. George, Aug. 5, 1895.

A. M. H.

said tract

Sworn and subscribed before me this.....
day of .....of.....187...

.....

Register.

931

(Also indorsed.)

Exhibit F.

Filed Apl 14, 1886. R. & R. No. 187. "C" to R. and R., Dec. 30-95.

932

U. S. Land Office, Duluth, Minn., July 21st, 1885, "C" to Hon. Edward "C" Stringer.

Feby. 19, 1896, as to delivery of this scrip Sioux half-breed scrip certificate 19 D., Register No. 188. Located by F. W. Eaton, attorney in fact for Orillie Moreau. Sec. 30, Tp. 63 N., R. 11 W.

933

Noted on scrip record.

Cancelled by Dept. decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R., Feby. 19, 1889. E. S. E. Div. "H." Posted in tract Book, Sept. 9-1885.

Cancellation noted June 4-89. M. P. W.

See to R. & R., April 17, 1885. A. M. H.

(Over.)

9-250.

86-99065-14.

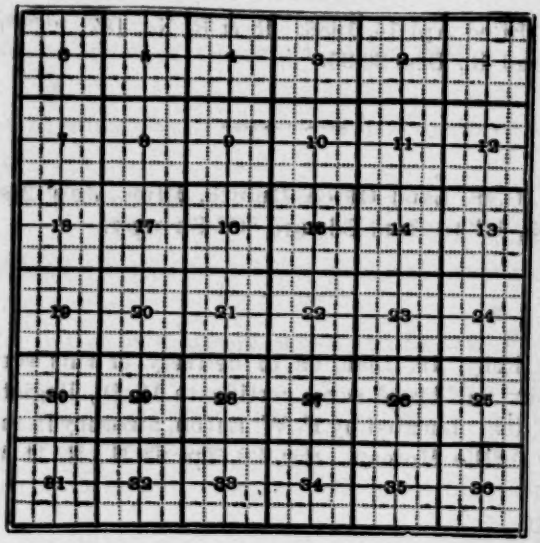
"C" to Secretary, Sept. 17, 1895.

934

Township No. 63 N., Range 11 W., 4th P. M.

935

936



U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

In the matter of the application of Orillie Stram to locate Sioux half-breed scrip No. 19, Letter E., for 160 acres of unsurveyed land. 937

Richard Fagan, being first duly sworn on his oath, says that he is acquainted with Frank W. Eaton and with the land described above. That he has been upon said land and knows the character of the improvements thereon and that such improvements consist of a one story dwelling house, fourteen by sixteen feet, with door and window, and shingle roof, that there is cleared on said land about one-half acre.

RICHARD FAGAN. 938

Sworn and subscribed before me
this 16th day of June, A. D. 1883.

J. R. CAREY,
Register.

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. 939
Louis.—ss.

In the matter of the application of Orillie Stram, formerly Orillie Moreau, to locate Sioux half-breed scrip No. 19, Letter E., for one hundred sixty acres of land.

Frank W. Eaton, being duly sworn on his oath says, that he is the attorney in fact of said Orillie Stram,

and is duly authorized to locate for her the scrip above described, and that he has so located the same upon the following described unsurveyed land in the Duluth Land District, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of
940 range twelve (12), west of the fourth principal meridian, thence east two hundred and forty rods (240) to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence north eighty (80)rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods, thence south eighty(80)rods,thence west eighty (80) rods, thence south eighty (80) rods, to the place of beginning, which said land when surveyed will be described
941 as follows, to-wit: The southeast quarter of the northeast quarter(S. E. 1-4 of N. E. 1-4), the northeast quarter of the southeast quarter (N. E. 1-4 of S. E. 1-4) of section thirty (30), and the west half of the northwest quarter (W. 1-2 of N. W. 1-4) of section twenty-nine (29), in town sixty-three (63) north of range eleven (11) west of the fourth principal meridian, that he has as such attorney, built upon said land a dwelling house fourteen by sixteen feet, one story high, built of timber and covered with split shingles with door and win-
942 dows, and has cleared ready for cultivation one-half acre of said land.

That said improvements were made under the personal direction of said Orillie Stram and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me
this 16th day of June, A. D. 1883.

J. R. CAREY,
Register.

943

U. S. LAND OFFICE,
Duluth, Minn.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Richard Fagan, being duly sworn on his oath, says, that he is acquainted with Frank W. Eaton, the affiant in the affidavit hereto attached, that he is acquainted with the land described in said affidavit, 944 and has been on the said land, that he has read said affidavit and knows the contents thereof and knows of his own knowledge that the improvements therein described have been made as therein described and are not on the said land, and the statements in said affidavit, made in regard to said improvements are correct.

RICHARD FAGAN.

Sworn and subscribed before me
this 16th day of June, A. D. 1883. 945

J. R. CAREY,
Register.

Scrip Certificate No. 19 E. Register and Receiver's No. .....

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

Act of July 17, 1854.

LAND OFFICE, Duluth, Minn.,
July 16, 1883.

946 We hereby certify, that the attached half-breed scrip No. 19, Letter E., was on this day received at this office from Orillie Stram of Crawford County, State of Wisconsin, by Frank W. Eaton, her attorney in fact.

J. R. CAREY,
Register.
W. W. SPALDING,
Receiver.

947

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the unsurveyed tract of land, designated as follows, to-wit: Starting at the quarter post on the east line of section twenty-five (25) in town sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence east two hundred forty rods to the place
948 of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence south eighty (80) rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods, thence south eighty (80) rods, thence west eighty (80) rods, thence south eighty (80) rods to the place of beginning, containing one hundred sixty (160) acres, in the District of Lands subject to sale at the Land Office at Duluth, Minn., in satisfaction of the at-

tached scrip No. 19, Letter E., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILLIE STRAM, (Seal.)
By F. W. EATON,
Her Attorney in Fact.

Attest: 949

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

We hereby certify, that the annexed scrip, No. 19, Letter D., has been this day located on the unsurveyed tract of land, as described within, containing one hundred sixty (160) acres, agreeably to the Act of Congress of July 17, 1854, and by the party duly authorized to make such location. 950

J. R. CAREY,
Register.
W. W. SPALDING,
Receiver.

951

Indorsed on the back as follows:

LAND OFFICE, Duluth, Minn.,
June 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the ninth (9th) day of June, 1883, and that there was no person living on the same at

that time, nor were there any improvements on it, except those of Orillie Stram nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.

952 J. R. CAREY,
Register.

Scrip Certificate No. 19 E. Register and Receiver's No. 187.

SIOUX HALF-BREED RESERVE AT LAKE PEPIN.

953

Act of July 17, 1854.

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the attached half-breed scrip No. 19 D., Letter D., was on this day adjusted at this office for Orillie Moreau of St. Louis County, State of Minnesota.

G. G. HARTLEY,
Register.

954 E. G. SWANSTROM,
Receiver.

I, Orillie Stram, formerly Orillie Moreau, of Crawford County, State of Wisconsin, hereby apply to locate, and do locate, the tract of land designated as follows, to-wit: Lots number one (1),

and two (2) and southwest quarter of northeast quarter and northwest quarter of southeast quarter of section thirty (30) north, of range eleven (11) west of the 4th principal meridian.

(The above location is hereby made to adjust to the U. S. survey the location made June 16th, 1883, upon unsurveyed land of half-breed scrip No. 19, Letter E., issued under the Act of Con- 955
gress July 17, 1854.)

Containing one hundred and fifty-two acres, in the District of Lands, subject to sale at the Land Office at Duluth, Minn., in satisfaction of the attached scrip, No. 19, Letter E., issued under the Act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILLIE STRAM, (Seal.) 956
By F. W. EATON,
Her Attorney in Fact.

Attest:

N. B. THAYER.

Cancelled by Dept. decision of Feby. 18, 1889, affirming office decision of March 7-87. See to R. & R., Feby. 19, 1889.

957

LAND OFFICE, Duluth, Minn.,
July 21st, 1885.

We hereby certify, that the annexed scrip, No. 19, Letter E, has been this day located on the ....tract of land, as described within, containing 152 acres, agreeably to the Act of Congress of July

17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY,
Register.
E. G. SWANSTROM,
Receiver.

958 ———

(Indorsed on back as follows.)

Land Office,..... 187

See to James A. George, April 18, 1895.

33332

being duly sworn says: I am acquainted with the.....tract

See to James A. George, April 30, 1895.

959 A. M. H.

of land described within, by personal examination of the same

See telegram May 18, 1895, to R. & R. calling for report Div. A. A. M. H.

on the .....day of.....187... and that there was no person

See to Geo. L. Lonstorf, May 6 and 18, 1895,

A. M. H.

960 living on the same at that time, nor were there

See to R. and R., Aug. 2, 1895, enclosing scrip.

A. M. H.

any improvements on it except those of...nor any

See to Burdette Thompson and Low, Aug. 5, 1895.

A. M. H.

person claiming said tract.

See to James A. George, Aug. 5, 1895.

A. M. H.

Sworn and subscribed before me this..... day of..... 187....

.....

Register.

961

(Also indorsed on back as follows.)

Exhibit F. Filed Apl. 14-86. R. & R., No. 188 "C" to R. & R., Dec. 30-95.

962

U. S. Land Office, Duluth, Minn., July 21, 1885. "C" to Hon. E. C. Stringer as to delivery of this scrip, Feby. 19-96. Sioux half-breed scrip certificate, 19 E., Register's No. 187. Located by F. W. Eaton, attorney in fact for Orillie Moreau Sec. 30, Tp. 63, N. R. 11, W. Noted on Scrip records H. Cancelled by Dept. decision of Feby. 18, 1889, affirming ours of Mch 7-87. See to R. & R. Feby. 19-89, E. S. E. Div. "H." Posted on tract book Sept 9-85. Cancellation noted June 4-89. J. M. R. W. P. W. See to R. & R., April 17, 1895, A. M. H. 9-230. 86-99065.

(Over.)

963

"C" to Secretary, Sept. 17, 1895.

This indenture made this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six, between Orillie Stram (before marriage Orilie Moreau) and Roman Stram, her husband, of Crawford County and State of

Wisconsin, parties of the first part, and Frank W. Eaton, of Duluth, St. Louis County, State of Minnesota, party of the second part.

Witnesseth, that whereas, the said Frank W. Eaton, as our duly constituted and appointed attorney in fact, did on the 16th day of June, A. D.
964 1883, caused to be filed in the U. S. Land Office at Duluth, Minnesota, an application for certain lands and Sioux half-breed scrip, No. 19 D., and No. 19 E., each for 160 acres of land, thereby by virtue of the laws of the United States and conditions precedent which had been complied with by the said Frank W. Eaton, our attorney in fact as aforesaid, vesting the title to the said land as described in said application by metes and bounds in me, the said Orillie Stram (the said
965 description being by metes and bounds for the reason that the said land had not yet been surveyed by the United States) which said land has since been surveyed by the government and a plat thereof filed in the United States Land Office at Duluth, Minnesota, and upon said plat the aforesaid scrip and entry was adjusted July 21st, A. D. 1885, thereby specifically and perfectly describing the land filed upon for me, the said Orillie Stram, by the said Frank W. Eaton, and intended to be entered on June 16th, A. D. 1883, in the name of me,
966 the said Orillie Stram, by our attorney in fact, the said Frank W. Eaton, and

Whereas, we, the said Orillie Stram and Roman Stram, did on the 25th day of May, A. D. 1883, by two certain powers of attorney, duly executed, acknowledged and delivered by us to Leonidas Merritt, of Duluth, St. Louis County, State of Minnesota, which said powers of attorney were duly recorded in the office of the Regis-

ter of Deeds, for St. Louis County, Minnesota, in Book "A" of Powers of Attorney, on pages 613 and 614 therein and thereby constituting and appointing the said Leonidas Merritt the attorney in fact of the said Orillie Stram, with full power and authority in her name and stead to grant, bargain, sell, demise, lease, convey and confirm the said lands which we then owned or which we might thereafter acquire, or become seized of under and by virtue of locations of Sioux half-breed scrip No. 19 E., for 160 acres of land and No. 19 D., for 160 acres of land, issued to me, the said Orillie Stram, and 967

Whereas, the said Leonidas Merritt, as our attorney in fact, on the 30th day of October, A. D. 1885, did by Warranty Deed, duly executed by him, convey to the said Frank W. Eaton, an undivided seven-ninths part and interest in the said lands which, according to the said survey and plat and in said deed are described as follows, to-wit: "All of the following pieces, parcels and tracts of land situate in the Counties of St. Louis and Lake, in the State of Minnesota, described as follows, to-wit: Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government survey three hundred thirteen and 61-100 (313.61) acres of land, more or less, which said warranty deed was upon the 3rd day of November, A. D. 1885, at 2 o'clock P. M., duly recorded in the office of the Register of Deeds 968 969

for St. Louis County, Minnesota, in Book A. 3 of Deeds, for the County of Lake in the State of Minnesota, on the 5th day of December, A. D. 1885, at 3 o'clock P. M., in Book D., of Deeds, page 205. Now therefore, we, the said Orillie Stram and Roman Stram, parties of the first part, do
970 hereby fully ratify and confirm the said conveyance of said land as above described to the said Frank W. Eaton, by our said attorney in fact, the said Leonidas Merritt and do hereby and herein fully ratify and confirm all and every act, conveyance made and matter and thing done by our said attorney in fact, Leonidas Merritt, under and by virtue of the said power of attorney as aforesaid. For the purpose of more effectually ratifying and confirming the acts of our said attorney,
971 Leonidas Merritt, and in consideration of the sum of one (1) dollar to us in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Frank W. Eaton, party of the second part, his heirs or assigns, forever, an undivided seven-ninths part and interest i nthe following described tracts, pieces or parcels of land situate in the Counties of St. Louis and Lake and State of Min-
972 nesota, known and described as follows, to-wit:

Lots one (1), two (2), three (3), five (5) and six (6), the southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter, all being in section thirty (30) in township No. sixty-three (63) north of range No. eleven (11) west of the 4th principal meridian in Minnesota, containing according to the government sur-

vey three hundred thirteen and sixty-one hundredths (313.61) acres, more or less.

To have and to hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns forever, and the said parties 973
of the first part for their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns forever, that they are well seized in fee of the said land and premises aforesaid, and have good right to sell and convey the said land in manner and form aforesaid and that the same is free and clear from all incumbrances; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and as- 974
signs, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORILLIE STRAM, (Seal.)
Formerly Orilie Moreau.
ROMAN STRAM.

Signed and delivered in pres- 975
ence of
JAC. RAFFAUF.
ALEX. RAFFAUF.

STATE OF WISCONSIN, COUNTY OF CRAWford.—ss.

I, Jac Raffauf, a notary public within and for said county, do hereby certify that on this 31st day of March, A. D. 1886, personally came before me Orillie Stram, formerly Orillie Moreau,
976 and Roman Stram, her husband, to me well known to be the same persons described in and who executed the foregoing instrument and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

JAC. RAFFAUF,
Notary Public, for
(Seal.) Crawford Co., Wisconsin.

977

OFFICE OF REGISTER OF DEEDS.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I hereby certify that the within instrument was filed in this office for record on the 24th day of April A. D., 1886, at 8 o'clock A. M., and was duly recorded in Book D. of Deed Records, page
978 264 and 265.

G. A. SCHULZE,
Register of Deeds.
By.....Deputy.

EXHIBIT H.

Warranty deed and confirmation. Orillie Stram and husband, to Frank W. Eaton.

OFFICE OF REGISTER OF DEEDS.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

I hereby certify that the within deed was filed in this office for record on the 3rd day of April, A. D. 1886, at 10 o'clock A. M., and was duly recorded in Book 8 of Deeds, page 46.

979

FRANK BURKE, JR.,
Register of Deeds.

By.....Deputy.

Not entered for taxation this.....
day of.....A. D. 18....

.....
County Auditor.

980

Know all men by these presents, that Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, and State of Wisconsin, of the..... ..... have made, constituted and appointed, and by these presents do make, constitute and appoint Leonidas Merritt of St. Louis County, in the State of Minnesota, our true and lawful attorney for us, or each of us individually, and in our name, place and stead, to enter into 981 and upon, and take possession of any and all pieces and parcels of land or the timber and other materials thereon, in the State of Minnesota which we now own, or which we may hereafter acquire or become seized of, or in which we may now or hereafter be in anyway interested; under and by virtue of location of Sioux (or Dakota) half-breed scrip No. 19, Letter "D" for 160 acres, issued to

the said Orillie Moreau, now Orillie Stram, under Act of July 17, 1854, United States statutes at large, page 304, chapter 83, authorizing the issuance of said scrip in exchange for lands of the Sioux half-breed reserve at Lake Pepin, Minnesota; and to prosecute and defend any and all
982 suits at law, for us, and each of us individually, in the courts of said State of Minnesota, or of the United States, relating to the title to said lands; we further authorize and empower our said attorney to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, or the right to sever and remove timber and other materials therefrom, to such person or persons, and for such prices as to our said attorney shall seem meet and proper, and thereupon to execute,
983 acknowledge and deliver in our name and on our behalf any deeds, leases, contracts or other instruments, sealed, or unsealed, and with or without covenants and warranty, as to him shall seem meet to carry out the foregoing powers; with full power to our said attorney to appoint a substitute or substitutes to perform any of the acts which our said attorney is by this instrument authorized to perform, with the right to revoke such appointments at pleasure. Hereby giving and granting to our said attorney or his substi-
984 tute or substitutes full power to do and perform anything proper or convenient in carrying out and executing said powers, as fully as we, or each of us individually, could do if personally present and acting in the premises. And we do further authorize and empower our said attorney, from time to time and at all or any time hereafter, to make and execute, or cause to be made and executed any such further deeds, conveyances, de-

mises or leases to said lands or any part thereof, for the further and more perfect assurance and confirmation of the title to said premises, to the purchaser or purchasers, their heirs or assigns.

And we hereby revoke all powers of attorney by us heretofore made, authorizing any person to do any act relative to any part of said lands.

Hereby ratifying and confirming whatsoever our said attorney or any substitute appointed by him may do in the premises by virtue thereof. 985

In witness whereof, we have set our hands and seals this twenty-fifth day of May, A. D. 1883

ORILLIE STRAM, (Seal.)
Formerly Orillie Moreau, Scripee.
ROMAN STRAM, (Seal.)

Signed, sealed and delivered in presence of 986

JAC. RAFFAUF.
LYDIA LEROUX.

STATE OF WISCONSIN, COUNTY OF CRAWFORD—ss.

Be it remembered, that on this 25th day of May in the year one thousand eight hundred and eighty-three, before me, Jac. Raffauf, a notary public, within and for said County and State personally appeared Orillie Moreau, now Orillie Stram, and Roman Stram, her husband, well known to me to be the persons who are described in and who executed the within and foregoing instrument, and severally duly acknowledged to me, that they executed the same freely. And the 987

said Orillie Stram, formerly Orillie Moreau, who is described as a married woman, and whose name is subscribed to the within and foregoing instrument, upon an examination without the hearing of her husband, being first by me made acquainted with the contents of said instrument, thereupon
988 acknowledged to me that she executed the same freely, and that she did not wish to retract such execution.

In witness whereof I have hereunto set my hand and official seal at said county, the day and year above written.

JAC. RAFFAUF,
Notary Public,
(Seal.) Crawford County, Wisconsin.

989

Indorsed on back:

EXHIBIT I, 3831.

OFFICE OF REGISTER OF DEEDS, COUNTY
990 of Saint Louis.—ss.

I hereby certify that the within power of attorney was filed in this office for record on the 22nd day of June, A. D. 1883, at 2 o'clock P. M., and was duly recorded in Book A. of Power of Attorney, page 63.

J. A. MANNHEIM,
Register of Deeds.
By I. C. VAN NORMAN,
Deputy.

REGISTER'S OFFICE, LAKE COUNTY, MINN.
—ss.

Received for record this 14th day of July, A. D. 1883, at 4 o'clock P. M., and was duly recorded in Book "B" of Deeds, page 596 to 598.

PAUL F. E. WIELAND,
(Seal.) Register of Deeds. 991
86-99065-17.

Know all men by these presents, that we, Orillie Stram, formerly Orillie Moreau, and Roman Stram, her husband, of Crawford County, and State of Wisconsin, of the..... 992
..... have made, constituted and appointed, and by these presents do make, constitute and appoint Leonidas Merritt of St. Louis County, in the State of Minnesota, our true and lawful attorney for us, or each of us individually, and in our name, place and stead, to enter into and upon, and take possession of any and all pieces and parcels of land or the timber and other materials thereon, in the State of Minnesota which we now own, or which we may hereafter acquire or become seized of, or in which we may now or 993
hereafter be in anyway interested; under and by virtue of location of Sioux (or Dakota) half-breed scrip No. 19, Letter "E" for 160 acres, issued to the said Orilie Moreau, now Stram, under Act of July 17, 1854, United States statutes at large, page 304, chapter 83, authorizing the issuance of said scrip in exchange for lands of the Sioux half-breed reserve at Lake Pepin, Minne-

sota; and to prosecute and defend any and all suits at law, for us, and each of us individually, in the courts of said State of Minnesota, or of the United States, relating to the title to said lands; we further authorize and empower our said attorney to grant, bargain, sell, demise, lease, convey and confirm said land, or any part thereof, or
994 the right to sever and remove timber and other materials therefrom, to such person or persons, and for such prices as to our said attorney shall seem meet and proper, and thereupon to execute, acknowledge and deliver in our name and on our behalf any deeds, leases, contracts or other instruments, sealed, or unsealed, and with or without covenants and warranty, as to him shall seem meet to carry out the foregoing powers; with full
995 power to our said attorney to appoint a substitute or substitutes to perform any of the acts which our said attorney is by this instrument authorized to perform, with the right to revoke such appointments at pleasure. Hereby giving and granting to our said attorney or his substitute or substitutes full power to do and perform everything proper or convenient in carrying out and executing said powers, as fully as we, or each of us individually, could do if personally present and acting in the premises. And we do further
996 authorize and empower our said attorney, from time to time and at all or any time hereafter, to make and execute, or cause to be made and executed any such further deeds, conveyances, demises or leases to said lands or any part thereof, for the further and more perfect assurance and confirmation of the title to said premises, to the purchaser or purchasers, their heirs or assigns.

And we hereby revoke all powers of attorney by us heretofore made, authorizing any person to do any act relative to any part of said lands.

Hereby ratifying and confirming whatsoever our said attorney or any substitute appointed by him may do in the premises by virtue thereof.

In witness whereof, we have set our hands 997
and seals this twenty-fifth day of May, A. D. 1883.

ORILIE STRAM, (Seal.)
Formerly Orillie Moreau, Scripee.
ROMAN STRAM, (Seal.)

Signed, sealed and delivered in
presence of
JAC. RAFFAUF, (Seal.)
LYDIA LEROUX, (Seal.)

998

STATE OF WISCONSIN, COUNTY OF CRAWFORD—ss.

Be it remembered, that on this 25th day of May, in the year one thousand eight hundred and eighty-three, before me, Jac. Raffauf, a notary public, within and for said County and State personally appeared Orilie Stram, and 999
Roman Stram, her husband, well known to me to be the persons who are described in and who executed the within and foregoing instrument, and severally duly acknowledged to me, that they executed the same freely. And the said Orillie Stram, formerly Orillie Moreau, who is described as a married woman, and whose name is subscribed to the within and foregoing instrument, upon an examination without the hearing

of her husband, being first by me made acquainted with the contents of said instrument, thereupon acknowledged to me that she executed the same freely, and that she did not wish to retract such execution.

In witness whereof I have hereunto set my
1000 hand and official seal at said county, the day and year above written.

JAC. RAFFAUF,
Notary Public,
(Seal.) Crawford County, State of Wisconsin.

EXHIBIT J.

1001 OFFICE OF REGISTER OF DEEDS, COUNTY of Saint Louis.—ss.

I hereby certify that the within power of attorney was filed in this office for record on the 22nd day of June, A. D. 1883, at 2 o'clock P. M., and was recorded in Book A. of Power of Attorney, page 614.

J. A. MANNHEIM,
Register of Deeds.
1002 By I. C. VAN NORMAN,
Deputy.

19 E. ST. LOUIS CO.
86-99065-9.

(33 of Deeds 263.)

No. 6443 Deed.

Emil Hartmann,

to

The Germania Iron Co.

1003

Filed June 12th, A. D. 1889, at 11:10 A. M.

This indenture made this 7th day of June, A. D. 1889, between Emil Hartmann and Betty Hartmann, his wife, of Duluth, Minnesota, parties of the first part and The Germania Iron Company, a corporation under the laws of the State of Minnesota, party of the second part, witnesseth, 1004

That the said parties of the first part, for and in consideration of the sum of fifty thousand ($50,000.00) to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, demise, release and convey unto the said party of the second part release and convey unto the said party of the second part, its successors and assigns, forever, all the following described pieces or parcels of land of which the said Emil 1005 Hartmann is the equitable owner, situate in the counties of St. Louis and Lake in the State of Minnesota, to-wit:

The north west quarter of the south east quarter (N. W. 1-4 of S. E. 1-4) the south east quarter of the north west quarter (S. E. 1-4 of N. W. 1-4) and lots six (6) and seven (7), and the north east quarter of the south west quarter (N. E.1-4 of S.

W. 1-4) all in section thirty (30) in township sixty-three (63) north of range eleven (11) west.

To have and to hold the same together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, its successors and
1006 assigns, forever. And the said Emil Hartmann, one of the parties of the first part, for himself, his heirs, executors and administrators, does covenant with the said party of the second part, its successors and assigns, that he has not made, done, executed or suffered any act or thing whatsoever whereby the above granted premises or any part thereof, or at any time hereafter, shall or may be imperiled, charged or incumbered in any manner whatsoever, and the title to the above granted
1007 premises against all persons lawfully claiming the same from, through or under him, he, the said Emil Hartmann, will forever warrant and defend.

And the said Emil Hartmann, for himself and all persons hereafter claiming under him, covenants that he and they will at any time hereafter at the request and expense of the said party of the second part, its successors or assigns, make all such further assurances for the more effectual conveying of the said premises with the appurten-
1008 ances as may be reasonably required by it or them.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EMIL HARTMANN, (Seal.)
BETTY HARTMANN, (Seal.)

Signed, sealed and delivered in presence of
WM. S. WOODBRIDGE,
A. H. CRASSWELLER.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

On this 7th day of June, A. D. 1889, before me a notary public in and for said county, personally appeared Emil Hartmann and Betty Hartmann, his wife, to me known to be the persons named in and who executed the foregoing instrument, and they severally acknowledged that they executed the same as their free act and deed. 1009

A. H. CRASSWELLER,
Notary Public, St. Louis Co., Minn.
(Notarial Seal St. Louis
County, Minn.)

1010

(153 of Deeds 449.)

No. 12803.

Filed for record Feb. 18, 1899, at 4:15 P. M.

This indenture made this 3rd day of January in the year of our Lord one thousand eight hundred and ninety-eight, between the Germania Iron Company, a Minnesota corporation of the County of St. Louis and State of Minnesota, party of the first part, and the Midway Company (also a Minnesota corporation) of the County of St. Louis and 1011 State of Minnesota, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, demise, release and convey unto the said party of the second part, and to its successors and assigns, forever, all the following described lots, pieces or

parcels of land situate in the County of Lake and State of Minnesota, and known and described as follows, to-wit: Lot one (1), lot two (2), the south west quarter of the north east quarter (S. W. 1-4 of N. E. 1-4) and north west quarter of the south east quarter (N. W. 1-4 of S. E. 1-4) and the
1012 south east quarter of the north west quarter (S. E. 1-4 of N. W. 1-4) all in section thirty (30) township sixty-three (63) range eleven (11). To have and to hold the same together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, its successors and assigns, forever.

In testimony whereof the said party of the first part has caused these presents to be signed by its president and secretary and its corporate
1013 seal to be hereto affixed the day and year first above written.

.....

By A. M. MILLER, President.

Attest:

WM. W. BILLSON, Secretary.

(The Germania Iron Company Corporate Seal.)

Signed, sealed and delivered in presence of

1014 B. F. MYERS.

ED. A. MATTRIX.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

On this 3rd day of January, A. D. 1898, before me personally appeared A. M. Miller and

William W. Billson, to me personally known, who being each by me duly sworn, did say that they are respectively the president and secretary of the Germania Iron Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. M. Miller and William W. Billson acknowledged said instrument to be the free act and deed of said corporation. 1015

B. F. MYERS,
Notary Public, St. Louis Co., Minn.

(Notarial Seal St. Louis
County, Minn.)

1016

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

(Venue changed to St. Louis County.)

The Midway Company, (Substituted for The Germania Iron Company, . Plaintiff, 1017

vs.

Frank W. Eaton, Leonidas Merritt, et al.,
Defendants.

STIPULATION.

It is hereby stipulated and agreed, that either party hereto may have until the 25th day of Janu-

ary, A. D. 1900, to propose amendments to the proposed case, a copy of which is herewith served, and that said proposed case, with the amendments, if any, proposed thereto, shall be presented for allowance or settlement upon the 3rd day of February, A. D. 1900; that a motion for a
1018 new trial may at the same time be made in said cause without further notice, and that meanwhile entry of judgment herein be stayed.

Dated Jan. 13th, A. D. 1900.

FRANK CUTTING
AND TOWNE & HARRIS,
Attys. for Frank W. Eaton.
J. L. WASHBURN AND
W. D. BAILEY,
Attys. for Merritt, Clark & Fagan.
1019 WM. B. PHELPS,
Atty. for Margaretha Lonstorf.
JOHN BRENNAN
AND JOHN JENSWOLD, Jr.,
Attys. for Thos. Hyde.
WALTER AYERS,
Attorney for Plaintiff.

1020

The above stipulation shall not be construed as a bar to any application which may be made by defendant Hyde for further time in which to make amendments to the proposed case.

WALTER AYERS,
Attorney for Plaintiff.
JOHN JENSWOLD, Jr.,
Atty. for Deft. Hyde.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

(Venue changed to St. Louis County.)

1021

The Midway Company, (Substituted for The Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

NOTICE OF MOTION.

1022

Please take notice, that on the 3rd day of February, A. D. 1900, at the hour of 9:30 A. M., or as soon thereafter as counsel can be heard, at the Court House, in the City of Duluth, a motion will be made that the decision in the above entitled cause be vacated and a new trial granted, for the following causes, to-wit:

1. That the said decision is not justified by the evidence.

2. That the decision is contrary to law. 1023

3. For errors of law occurring upon the trial and duly accepted to by the plaintiff herein.

Such motion will be made upon all of the files in said cause and upon the case settled and allowed herein.

Yours respectfully,
WALTER AYERS,
Attorney for Plaintiff.

To:

Messrs. J. L. Washburn, W. D. Bailey, L. C. Harris, Frank Cutting, W. B. Phelps and Phelps & McClintock, and John Jenswold, Jr. Attorneys for Defendants.

1024

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

(Venue changed to St. Louis County.)

1025 The Midway Company, (Substituted for The Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

ORDER.

1026 Motion having been made in the above entitled cause that the decision therein be vacated and a new trial granted upon the grounds that the decision is not justified by the evidence and is contrary to law, and also that errors of law occurring upon the trial of said cause, which were duly excepted to by the plaintiff, said motion being based upon all the files in said cause and the case as settled and allowed therein, now upon due consideration, Walter Ayers appearing for the motion and J. L. Washburn, Towne & Harris and John Jenswold, Jr., contra.

It is ordered that said motion be, and the same hereby is in all things denied.

Dated February 10th, 1900.

By the Court,

WM. A. CANT, Judge.

1027

MEMORANDUM.

In this case the Court follows the ruling of Hon. S. H. Moer, while one of the judges of this court in denying a motion for a new trial in the case of The Midway Company vs. Frank W. Eaton, et al.

WM. A. CANT, Judge.

1028

Filed in my office at .... o'clock .... M., Feb. 10, 1900.

GEO. F. CHESTER,
Clerk of District Court.
By A. J. TAYLOR, Deputy.

1029

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss. District Court, Eleventh Judicial District.

1030 The Midway Company, Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

The Midway Company, (Substituted for The Germania Iron Company, Plaintiff,

1031 vs.

Frank W. Eaton, et al., Defendants.

You are hereby notified that W. B. Phelps, Esq., who has heretofore acted as attorney for the defendant Margaretha Lonstorf, in the above entitled actions, and each of them, has formally
1032 withdrawn from the said cases, and each of them, as attorney for the defendant Margaretha Lonstorf, and has, by an instrument in writing, authorized the said defendant to engage other counsel in said cases and each of them.

You are hereby further notified that we have been retained as counsel and attorneys for the said defendant, Margaretha Lonstorf, in each of the above entitled actions, and that all papers

in said causes, and each of them, should be served on the undersigned.

Feby. 2nd 1900.

TOWNE & HARRIS,
Attorneys for Margaretha Lonstorf,
700-701 Torey Bldg., Duluth, Minn.

To WALTER AYERS, 1033
Atty. for Plaintiffs.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

(Venue changed to St. Louis County.) 1034

The Midway Company, substituted for Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F. Huntress, Samuel C. Brown, Merrill M. 1035
Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, David C. Sullivan, Thomas Chellew and Bishop Iron Company, Defendants.

This cause having come on for trial at the General May, 1899 Term of said court before the

Hon. S. H. Moer, one of the judges of said court presiding, without a jury, and having been tried on the 12th day of June, 1899.

Messrs. Walter Ayers and P. H. Seymour appearing as attorneys for the plaintiff; and

Messrs. Towne & Harris and Frank Cutting,
1036 appearing as attorneys for the defendant Frank W. Eaton;

Messrs. J. L. Washburn and W. D. Bailey appearing as attorneys for the defendants Clark, Fagan and Merritt;

Mr. W. B. Phelps appearing as attorney for the defendant Lonstorf;

Messrs. John Brennan and John Jenswold, Jr., appearing as attorneys for the defendant Hyde, and there being no appearance for any oth-
1037 er of the defendants, and the respective parties having produced their evidence before the court and the court being fully advised in the premises having made and filed its findings of fact and conclusions of law therein on the 27th day of December, 1899.

Now therefore, On motion of the above named attorneys appearing for the said several defendants, it is hereby ordered, adjudged and decreed as follows:

1038 1. That the defendant Frank W. Eaton is the owner of an undivided thirteen thirty-sixth (13-36) of the premises described in the complaint, to-wit: The southeast quarter of the northwest quarter of section thirty (30) in township sixty-three (63) north, of range eleven (11) west, of the fourth principal meridian;

That the defendant Merrill M. Clark is the owner of an undivided nine thirty-sixths (9-36) of

said premises; that the defendant Margaretha Lonstorf is the owner of an undvided eight thirty-sixths (8-36) of said premises, and the defendant Richard H. Fagan is the owner of an undivided six thirty-sixths (6-36) thereof, and that the said parties have through various conveyances succeeded to the rights of one Orillie Stram who was entitled to have and receive a patent therefor from the Government of the United States. 1039

2. It is further adjudged, determined and decreed that neither the plaintiff nor any of the other defendants are entitled to any right, title or interest in or to the said tract of land, and that the plaintiff's predecessors one Emil Hartmann, to whom patent issued therefor, from the United States, was not entitled to have and receive said patent, and that whatever title accrued 1040 thereby was at most the bare legal title, subject to all of the rights and interests of the said defendants hereinbefore named; and that the said Emil Hartmann held said title trust as trustee for the said several defendants, and that the plaintiff, who has succeeded to whatever legal title the said Hartmann acquired by virtue of the said patent, with full knowledge of all of the interests of the said defendants, holds the same in trust for the said 1041 several defendants in the proportions hereinbefore decreed; and

It is further ordered, adjudged and decreed that the said plaintiff, having no other right, title or interest in or lien upon the said premises, convey the said premises to the said several defendants in the proportions above decreed, and that, failing so to do, this judgment shall operate as effectual to transfer and vest whatever title is held

by the said plaintiff by virtue of the said patent, in the several defendants in the proportions above specified, upon recording a certified copy thereof in the office of the Register of Deeds of the County where said land is situated; and

It is further ordered, adjudged and decreed
1042 that the said defendants Eaton, Clark, Fagan and Lonstorf are the owners of both the legal and equitable title to the said premises in the proportions hereinbefore specified, and that the plaintiff has no right, title or interest therein, and

It is further ordered, adjudged and decreed that the said defendants Eaton, Clark, Fagan and Lonstorf have and recover of and from the said plaintiff their costs and disbursements taxed herein at $14.00.

1043 Witness the Honorable S. H. Moer, Judge of the District Court aforesaid, at Duluth, this 15th day of February in the year of our Lord, 1900.

GEO. F. CHESTER, Clerk.
By A. J. TALYOR, Deputy Clerk.

(Seal.)

Filed in my office at.... o'clock ....M., Feb. 15, 1900.

1044 GEO. F. CHESTER,
Clerk of District Court.
By A. J. TAYLOR, Deputy.

STATE OF MINNESOTA, COUNTY OF ST. Louis.—ss.

Walter Ayers being duly sworn upon his oath saith, that on the 24th day of February, A. D.

1900, at the hour of ten o'clock in the forenoon, he served a true copy of the annexed notice of appeal upon William B. Phelps, attorney for the defendant Margaretha Lonstorf, by handing to and leaving with John M. McClintock, the partner of said William B. Phelps, such true copy, at the office of said William B. Phelps, in the Torrey Building in the City of Duluth, said Wililam B. 1045
Phelps being then absent from his said office and the said John M. McClintock being then in charge thereof.

WALTER AYERS.

Subscribed and sworn to before me this 24th day of February, A. D. 1900.

H. A. DANCER,
Notary Public,
(Seal.) St. Louis Co., Minn. 1046

1047

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. District Court, Eleventh Judicial District.

1048 (Venue changed to St. Louis County.)

The Midway Company, substituted for Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, Leonidas Merritt, Roman Stram, Charles Stram, Lilly Stram, Mattie Stram, David Stram, Richard H. Fagan, Fred F.
1049 Huntress, Samuel C. Brown, Merrill M. Clark, Margaretha Lonstorf, Thomas Hyde, Charles P. Wheeler, David C. Sullivan, Thomas Chellew and Bishop Iron Company, Defendants.

NOTICE OF APPEAL.

1050

To Messrs. J. L. Washburn & W. D. Bailey, Towne & Harris, L. C. Harris and Frank Cutting, and W. B. Phelps, attorneys for the above named Defendants, Eaton, Merritt, Clark, Fagan and Lonstorf, and to George F. Chester, Clerk of said District Court:

Please take notice that the above plaintiff, The Midway Company, appeals to the Supreme

Court of the State of Minnesota from the order of the said District Court entered herein on the 10th day of February, A. D. 1900, denying plaintiff's motion for a new trial; and also from the judgment entered therein on the 15th day of February, A. D. 1900, and all thereof, excepting only that portion which adjudges and decrees that none of the other defendants are entitled to any right, title or interest in or to the tract of land therein described. 1051

Dated this 23rd day of February, A. D. 1900.

WALTER AYERS,
Attorney for Plaintiff.

P. H. SEYMOUR,
of Counsel.

1052

ENDORSED.

Due and personal service by copy of the within notice of appeal and undertaking accompanying the same, admitted at Duluth, this 24th day of February, A. D. 1900.

J. L. WASHBURN &
W. D. BAILEY,
Attys. for Defts. Merrill, Clark and Fagan. 1053

FRANK CUTTING,
L. C. HARRIS AND
TOWNE & HARRIS,
Attorneys for Defts. Eaton and Lonstorf.

GEO. F. CHESTER,
Clerk of said Court.
By A. J. TAYLOR, Deptuy.

Filed Feb. 24, 1900.

STATE OF MINNESOTA, COUNTY OF LAKE. —ss. In District Court, Eleventh Judicial District.

1054 The Midway Company, Substituted for Germania Iron Company, Plaintiff,

vs.

Frank W. Eaton, et al., Defendants.

It is hereby stipulated by and between the plaintiff in the above entitled action and Frank
1055 W. Eaton, one of said defendants, that the answer of the defendants Clark, Merritt and Fagan may stand as the answer of the said defendant Eaton in said action. The said answer not setting out the interest of the said Eaton in and to the premises involved in said action, it is stipulated that the said Eaton claims to be the owner of an undivided thirteen thirty-sixths interest in and to said premises, but this stipulation, on the part of the plaintiff, is to be in no wise construed or treated as an
1056 admission of the claim of the said Eaton, but on the contrary the plaintiff denies that the said Eaton has any right, title or interest in and to said premises, or any part thereof.

It is further stipulated that the reply of the plaintiff to the answer of the defendants Clark, Merritt and Fagan, heretofore served, shall stand as the reply of the plaintiff to the answer of said Frank W. Eaton. The stipulation for a change of venue in said action, heretofore made between

the plaintiff and the answering defendants in said action, and the order of the court based thereon changing the place of trial in said action to St. Louis County, are hereby entered into and consented to by said Eaton in the same manner and to the same effect as if said Eaton had originally been a party to said stipulation. This stipulation is entered into at the request of said Frank W. Eaton and for his sole accommodation, the said Frank W. Eaton having long been in default in said action, for want of an answer or demurrer. 1057

Dated April 20th, 1899.

WALTER AYERS,
Attorney for Plaintiff.

TOWNE & HARRIS,
Attorneys for Frank W. Eaton.

1058

Filed in my office at....o'clock ....M., May 3, 1899.

GEO. F. CHESTER,
Clerk of District Court.
By A. J. TAYLOR, Deputy.

1059

354 EXHIBIT A.

DEPARTMENT OF INTERIOR,
WASHINGTON, *February* 18*th*, 1889.

HYDE AND MCDONALD
vs.
EATON AND STRAM.

Sioux Half-breed Scrip.

The Commissioner of the General Land Office.

SIR: I have considered the case of Thomas W. Hyde and Angus McDonald *vs.* Frank W. Eaton, as attorney-in-fact for Orillie Stram, *née* Moreau, on appeal by the latter from the decision of your office, dated August 4th, 1888, holding for cancellation Sioux half-breed scrip, Nos. 19 D and 19 E, located and adjusted as follows:

Scrip No. 19 D upon lots 3, 5 and 6 and S. E. ¼ of N. W. ¼ sec. 30, and that numbered 19 E upon lots 1 and 2 and S. W. ¼ of N. E. ¼ and N. W. ¼ of S. E. ¼, same section, T. 63, N. R. 11, W., Duluth, Minnesota.

It appears that Frank W. Eaton as attorney-in-fact for said Orillie Stram, *née* Moreau, a Sioux half-breed Indian, filed in the Duluth, Minnesota, local land office, on June 16th, 1883, the scrip above mentioned, and located the same on certain unsurveyed land, in amount three hundred and twenty acres, which locations were subsequently adjusted by the local office, and approved and posted by your office to embrace the tracts above described.

Said half-breed scrip bore date November 24th, 1856, and had been issued under the provisions of the act of July 17th, 1854 (10 Stat., 304), to the Sioux half-breed named above.

July 20th, 1885, Angus McDonald presented at the local office a pre-emption application for lot 2, and the N. ½ of the S. E. ¼ and S. W. ¼ of N. E. ¼ of said section 30, which that office rejected, because the N. E. ¼ of the S. E. ¼ was denominated swamp and overflowed land, and as to the residue of the tract, because the date of settlement as alleged in the application to file did not antedate the unadjusted scrip location No. 19 E, with which it conflicted.

On the same day (July 20th, 1885), Thomas W. Hyde applied to make pre-emption filing for lots 5 and 6 and S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ of the same section (30), which application the local office rejected, for the reason that the alleged date of settlement did not antedate the unadjusted scrip location, No. 19 D.

November 14th, 1885, a hearing was ordered by your office upon the application of McDonald and Hyde, who alleged "that the scripee never made any improvements whatever upon said land, either in person or by an agent or attorney, and that said land, at the date of the attempted locations, was unsurveyed and belonged to the class of land only locatable with such scrip after the scripee shall have made improvements upon the same."

In support of the charges thus made was filed a copy of an affidavit (the original is now in the record), made October 9th, 1884, by the scripee, in which she denied ever having given to said Frank W. Eaton, either directly or indirectly, a power of attorney, or any authority of any kind to locate said scrip or to erect buildings and make improvements on the land in controversy, or upon any other land for her use and benefit.

355 In refutation of the denial made as above by the scripee, Eaton filed copies of two powers of attorney given him by said scripee and her husband, May 25th, 1883, conferring upon him the power and authority to locate said scrip, and to make the improvements, which under the act of 1854, were necessary before location could be made on unsurveyed lands; also to do any other act necessary to be done in the premises, in order to secure a permanent and *bona fide* location, in the same manner as if done by them personally.

The case proceeded to hearing, which was had April 6th, 1886.

The register and receiver, after reference to the denial by the scripee that she had ever constituted or appointed Frank W. Eaton her attorney-in-fact to locate the scrip or to make the improvements required for its location upon unsurveyed lands, also to the fact that her position up to date of hearing seemed to be that of one attempting to set aside powers of attorney wrongfully obtained from her; also to the endeavor of Hyde and McDonald on the day of the hearing to show that the scrip locations were illegal and that they had *bona fide* pre-emption claims to the disputed tracts, found as follows:

1. The scrip in question was located upon unsurveyed lands on June 16th, 1883, more than one year before the pre-emptors settled, and was adjusted to the surveys July 21st, 1885, nearly one year after settlement by said pre-emption claimants.

2. The record contains duly executed powers of attorney from the scripee and her husband to F. W. Eaton, giving him the full power to do all acts necessary "to perfect and secure a permanent and *bona fide* location" of the scrip.

3. Eaton, under said authority employed another to go upon the land and make suitable improvements, giving directions what improvements to make and how to make them, which improvements were made for Eaton, and for the purpose claimed by him.

4. The scripee, in her complaint, while stating that she did not know Eaton and never authorized him to make improvements on these lands, admitted that she parted with the scrip and signed powers of attorney shortly before the location. She did not appear at the hearing to testify in support of the charges made by her.

5. She has never asked that the locations be cancelled and that the scrip be returned to her, but, on the contrary, she between the date of her complaint and the day of hearing did execute and deliver a deed of confirmation, acknowledging, ratifying and confirming all that had been done by Eaton as her attorney.

On these findings of fact, the local officers concluded that "there is nothing in evidence to show that this scripee was misled or imposed upon by the defendant or his agents, or to controvert the

fact that the scrip locations were effected in strict conformity with the usual accepted practice in such cases, and in accordance with law and the rules of the Land Department."

They accordingly held, in effect, that contestants had failed to make a case, and that the scrip locations should stand.

From that action contestants Hyde and McDonald appealed to your office, assigning six specifications of error, viz:

1. The register and receiver were without authority to decide the cause, and could only properly report the case with their opinion upon the facts to your office.

2. This so-called decision was contrary to the evidence.

3. It was contrary to the law.

4. It treated the case as if the controversy was between the scripee and her attorney-in-fact, whereas it grew out of contest by third parties, who claim to have shown that the scrip was fraudulent on the part of both the scripee and her grantees.

356 5. The local officers in their so-called decision failed to pass upon the vital question in the case, viz: Whether the land contained improvements made by or under the personal supervision or direction of the scripee, and for her personal use and benefit.

6. They erred in finding that a confirmatory deed made between two of the parties to a fraudulent entry could bar the right of subsequent *bona fide* applicants.

Pending these proceedings on appeal, to wit: April 28th, 1887, Fred F. Huntress filed in the local land office applications to contest not alone the scrip locations, as your office seems to have assumed, but also the pre-emption claims of Hyde and McDonald. Said applications were by the local office transmitted to your office, which under date August 30, 1887, returned them to the local office, with instructions that they be held subject to the final disposition of the case at bar. They have since been returned to the department and are now in the record before me.

Your office decision, proceeding to a review of the facts disclosed by the record, found that accompanying the scrip and applications to locate the same were what purported to be the original powers of attorney, given May 25th, 1883, by the scripee and her husband, to Frank W. Eaton; that with each application was an affidavit by said Eaton, setting out that he under said powers of attorney had caused to be built upon each of the tracts upon which the scrip was located a house, fourteen by sixteen feet, one story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of each tract, and that said improvements were made under the personal direction of the scripee, and for her personal use and benefit.

Your said office decision further recites that in the record are what purport to be original powers of attorney given by the scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota, which they then owned or might thereafter acquire, or become interested in, by virtue of the location of the scrip in question; to prosecute and

defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey, and confirm said land, or any part thereof, by deed, conveyance, demise or lease, in the same manner as if performed by them individually.

Your said office decision further recites that in the record are certified copies of two warranty deeds, dated July 2d, 1883, and executed by said Leonidas Merritt, in the name of the scripee and her husband, under and by virtue of the power of attorney above mentioned, conveying to Edward Byrne, James H. Powers and Joseph Clement, an undivided one-third interest in and to all the land embraced in said scrip locations and involved in this controversy, the consideration named in each being $25,000.00; that there are also in the case certified copies of two warranty deeds, bearing date July 6th, 1883, executed in the same manner by the same parties of the first part, conveying to Frank W. Eaton an undivided two-thirds interest in and to the same tracts of land, the consideration named in each being $25,000.00; that Joseph Clement, one of the grantees of an undivided one-third interest, above mentioned, on August 28th, 1883, as appears by certified copies of two deeds of warranty on file, conveyed to one Nicholas Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each being $250.00; that on the next day (August 29th, 1883), as shown by certified copies on file, James H. Powers, another of the grantees of an undivided one-third interest, executed two similar deeds conveying to said Lansterf his undivided one-ninth interest in and to said tracts, the consideration named in each deed being $350.00.

Your office decision also mentions certain quitclaim deeds (certified copies of which are in the record), executed and given by
357 the several parties (except Clement), who made the above-mentioned warranty deeds, the purpose of the quitclaim deeds being to correct imperfect descriptions in the prior warranty deeds, which together embrace all the land covered by the scrip locations.

As a result of the conveyances above recited, your office decision finds that such title as passed under said conveyance now rests as follows:

Two-ninths interest in Nicholas Lansterf by conveyance from Powers and Clement. One-ninth interest in Edward Byrne under original conveyance from Merritt, as attorney-in-fact for the scripee, with power to sell; two-thirds (six-ninths) interest in Frank W. Eaton, under conveyance from Merritt, as attorney-in-fact.

Your office then holds that "these several deeds of conveyance and release conferred no greater title upon the grantees than the grantors had, which was simply a right to these tracts of land, subject to the final adjudication and approval of these locations."

It then makes reference to the fact disclosed by the record that prior to the hearing before the local office, to wit, on March 31st, 1886, the scripee and her husband joined in a deed of confirmation, ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt, relative to the tracts in question, done

and performed by them under the respective powers of attorney, given as hereinbefore described.

Proceeding, then, to a consideration of the testimony taken at the hearing, your office decision finds that it "establishes by a clear preponderance the fact that said Eaton by virtue of his power of attorney employed Edward Byrne to make the improvements upon the respective tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter," that Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886, never saw the land, and did not know whether said scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are concerned, to remove any objection to the acts previously performed by the latter, under and by virtue of his said power of attorney; that the affidavits accompanying the location of said scrip appear to fulfill the requirements of the circular of May 28th, 1878 (5 C. L. O., 126).

This would seem on its face to point to an adjudication in favor of the scrip locations; but your office decision further proceeds to say that the only other question left to pass upon touching the legality to these locations, is, whether the power of attorney given by the scripee to Frank W. Eaton, by virtue of which he made the locations, could carry with it, under the law, the power and authority to make the improvements, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes, that since the evidence shows clearly that the scripee in this case never saw the land, or the improvements, or had anything whatever to do therewith, and since the circular referred to, *supra*, requires that the Indian shall have a direct connection with the land, and claim the same for his or her personal use, the scrip locations are not valid and should be cancelled, as speculative and made with an evident intent to evade the law, rather than to comply in good faith with legal requirements.

Upon a careful examination of the entire record, I find the facts to be substantially as stated by your office decision and outlined herein.

Epitomized, they are as follows:

The scripee disposed of her scrip, surrendering possession thereof to some one now unknown. Said scrip was accompanied by two powers of attorney, executed in blank, one giving authority to some one not then named to locate the scrip; the other, giving a like authority to sell the land located upon. The scrip, after many years
358 and after passing through several hands, lodged in the hands of Frank W. Eaton, who thereupon filled up the blanks in the power of attorney to locate, inserting his own name as that of attorney-in-fact for such purpose. He employed others to make slight improvements on the lands in question (then unsurveyed) and after such improvements, which were scarcely deserving of the name, he located the scrip as attorney-in-fact for Orillie Stram, the scripee.

The blanks in the other power of attorney (that to sell) were filled up by inserting the name of Leonidas Merritt, who it appears was

a business partner of said Frank W. Eaton, and said Merritt, as attorney-in-fact of the scripee, executed certain warranty deeds, transferring and passing title to the lands covered by the scrip locations to certain parties therein named, it appearing that said parties were Eaton, who had made the locations, and three men, Edward Byrne, James H. Powers and Joseph Clement, who had been by him, or through his agency, employed to make the improvements above mentioned.

Money consideration was expressed in said deeds, but it is apparent from the evidence that the real consideration, so far as Byrne, Powers and Clement were concerned, was what they had done in making the improvements. They got an undivided one-third interest. The residue went to Eaton.

The scripee never saw the land. At the date of the location she had never seen Eaton, who acted as her attorney-in-fact, and did not then know that there was such a person in existence. She had, as a matter of fact, sold the scrip long prior to the location, and had no personal interest in the land, nor were the improvements made for her personal use and benefit. It was a matter of no moment to her where the scrip was located, or whether it was located at all or not. Her actual interest in the matter ceased when she disposed of the scrip. It was admitted by her so-called attorneys-in-fact that she was to have no interest in the land. For a long time she directly and positively repudiated Eaton and Merritt as her attorneys-in-fact, denying that they acted for her in any capacity whatever. Afterwards and but a few days prior to the hearing, she ratified by deed what had been done by them.

This ratification, it is evident, was procured at the solicitation of Eaton or Merritt, or both, and for a consideration. But such ratification does not change the fact that the improvements and location, though made under the guise of a power of attorney, were made, not under the direction and in the interest of the scripee, but for the benefit solely of another not even known to the scripee, viz: Eaton, who had inserted his name as attorney in the power executed in blank. If the location of the scrip was illegal and invalid, then the deed of ratification could not give it validity—could not vitalize that which originally had not in it the germ or essence of legal vitality.

This case is in all essential particulars like that of Joseph W. Allen, *et al.*, *vs.* Lewis Merrill, *et al.*, decided by me this day, 8 L. D., 207—review denied, 12 L. D., 138, so far as the method of making the scrip locations is a matter of concern, and the reasons of that case are in this particular applicable to this. Following the ruling of that case, I must hold that the scrip locations here in question are invalid, and your office decision so holding is affirmed.

There remain for disposition the rights of Hyde and McDonald. It is asserted that the case is not in such a position that any determination ought to be made as to these claims, and that must be determined by a view of the record and proceedings taken.

It appears that on the 9th day of October, 1884, Hyde filed with the register a paper addressed to the register and receiver, in the

caption described as being "An application for leave to contest the pretended entry, with Sioux half-breed certificate No. 19 E, for one hundred and sixty acres, issued to Orillie Moreau, on November 24th, 1856, and attempted to be located on the following-
359 described land, to wit: "Describing the land, and that in that application, after the allegation attacking the location, the following appears:

"That said contestant is a single man over 21 years of age, and has declared his intention to become a citizen of the United States, that he does not own 320 acres of land in any State or Territory, that he has not left land of his own in this State to reside on the public lands, and that he has never heretofore exercised his right under the pre-emption laws.

"That heretofore, to wit: on the 20th day of August, A. D. 1884, the said contestant made settlement on the said described land with a view to inhabiting and cultivating the same for his own exclusive use and benefit, and intends to make his declaratory statement for said lands under the pre-emption laws of the United States as soon as the surveyed plat of township 63, N. of range 11, W. of 4th P. M., shall be returned to the United States land office at Duluth, Minn.

"Wherefore your petitioner requests that this contest may be granted and a day set for the hearing thereof."

Attached to this application was an affidavit of verification, sworn to on the 29th of September, 1884.

This application is stated, in the Commissioner's order for a hearing, hereinafter mentioned, to have been transmitted by the register to the General Land Office October 31, 1884, and to have been supported by a copy of an affidavit of the scripee, which has been before spoken of.

On the 20th day of July, 1885, Hyde made application to file the declaratory statement previously mentioned in this opinion, which was rejected, and thirty days allowed by the register for appeal. On the 25th day of August, 1885, the register transmitted Hyde's appeal from that decision, to the General Land Office.

All the proceedings on the part of McDonald in respect to the land claimed by him correspond exactly with those of Hyde as to the land claimed by him; and were made by the same attorneys, and at the same time respectively.

Afterwards, on the 14th of November, 1885, the Commissioner of the General Land Office, by letter "C" of that date, ordered a hearing, in which, after reciting the allegations for and against the validity of the scrip, he proceeds:

"In view of the conflicting statements respecting the legality of these locations, I deem it proper that a hearing should be held, that the respective parties may have an opportunity to submit such proof as they may have in support of their allegations, and that this office may be possessed of all the facts possible in the matter; and the same is hereby ordered.

"You will notify all parties in interest of the time and place of hearing, and at the proper time thereafter you will transmit to this office the testimony taken thereat with your opinion thereon."

Under this order of the Commissioner, when the hearing came to be held, it seems to have been assumed by all parties that the rights of Hyde and McDonald as pre-emptors were involved; and voluminous testimony was taken, not only with respect to the rights of the scrip locators but with respect to the rights of the pre-emptors. Upon the conclusion of the hearing, the register and receiver, being of the opinion that the scrip locations were valid, disposed of the pre-emptor's claims as follows:

"The *bona fides* of Hyde and McDonald or their rights under the pre-emption law need not be considered here, as the question of their claims is contingent upon their ability to set aside the scrip locations, and thus render the land subject to pre-emption settlement.

360 Upon this showing of fact, we conclude that the contestants have failed to make out a case, and that the proceedings should be dismissed. It is so ordered.

The decision of the Assistant Commissioner makes no allusion to the contest in regard to Hyde and McDonald, simply reversing the decision of the local officers, as to the validity of the scrip location.

Upon examination of the testimony taken at the hearing the following appears in the examination of Hyde:

Q. Did you have any contract with Mr. White in writing or otherwise, by which he was to receive any compensation of interest in the land?

A. Yes, there was a contract.

Q. Where is it?

A. I don't know.

Q. When and where did you last see it?

A. I have not seen it since it was drawn up by Mr. White.

Q. What did it contain?

A. It contained that, when I proved up, I was to secure him a one-half interest.

McDonald testified as to the land covered by his pre-emption claim:

"Judge White has no interest in it. There is an understanding that he is to have an interest in it if we succeed in this trial; he is to have a half interest. * * * The arrangement with Hyde is the same as mine. White is to have half if we succeed in this. James H. Power is also to have an interest in it if we succeed. I don't know how much he is to get. I agreed to give him an interest if we succeeded in getting the land."

He further testified:

"Mr. White is paying the expenses of the claim with the understanding that he is to have half of it after we secure it."

Again—

"I am to let him have an interest in the land when I get it to pay him for his time and services. The contract I have with Mr. White for his one-half is in writing."

When asked how he could give White a half interest, unless he should deed to him one-half, he answered: "I could not very well."

White, when put upon the stand, testified that after diligent search he was unable to find the contract.

Further evidence than that above quoted from the testimony of Hyde and McDonald is unnecessary to show that they have, by the contracts which they admit having made, disqualified themselves from taking the land under the pre-emption law.

Counsel, in one of the briefs in the case, aver as to McDonald that the records of your office will show that he has already exhausted his pre-emption right by having made a pre-emption filing, and, having filed a formal relinquishment of this claim thereunder. I have not attempted to test the correctness of this averment by an inspection of the records of your office. It is deemed unnecessary in view of the testimony of Hyde and McDonald, the pre-emption claimants, as to their contract to sell.

The testimony of the two claimants establishes beyond question that the statements made in their application to contest, that their settlements were made wholly for their own use and benefit, was not well founded, and that it would be impossible for either of them to make the affidavit required by section 2262 R. S., "that he has not, directly or indirectly, made any agreement or contract, in any way or manner with any person whatever, by which the title which he might acquire from the Government of the United States should inure in whole or in part, to the benefit of any person except himself."

361 In view of this record and proof, it appears to be the duty of the department to dispose of these claims of pre-emption. A hearing has been had upon the validity of them, in which the evidence was adduced fully, and upon which the material facts appear to have been sufficiently elicited to leave no doubt. Whatever rights they might have established would, under a familiar rule of the department, have been regarded as fixed at the time when they made their application to file. Their application to file must be treated as if they had been allowed, subject to the rights of others, and it now appears that they ought to be cancelled, if filed. Their appeal (which is sent up in the record) from the rejection of their applications, appears to bring the whole matter before the department; and in the exercise of the power of supervision vested in the department by law, it seems to be demanded that upon this disclosure of the facts the proper action should be taken. If there had been no hearing upon this question, the proper action would be, upon a suggestion of such information, to direct a hearing to be had; but inasmuch as a hearing has been had and as the testimony which shows the absolute impossibility of perfecting a pre-emption title in these claimants has proceeded from themselves, testifying under oath, there appears no reason for directing a further hearing.

If their declaratory statements were now to be filed as of that date, the duty would rest on the department to cancel them, in accordance with the ordinary practice in such cases.

This leaves to be considered one other branch or feature of the case as now presented by the record. On April 28th, 1887, one Fred T. Huntress filed formal applications to contest the pre-emption

claims of said Hyde and McDonald, respectively, his charge being that said claims were initiated not in good faith to appropriate the lands to their own exclusive use, but for speculative purposes, they having agreed to convey title to other parties when procured by them.

Huntress, in his affidavits of contest, asks that a hearing be ordered to enable him to substantiate by competent proof the charges made.

Counsel for Huntress, however, argues in a brief recently filed that further hearing is unnecessary, and that the asserted claims of Hyde and McDonald may properly be rejected and finally disposed of on the record as it now exists.

It is therefore asked that such action be taken and the scrip locations, as well as the pre-emption claims of said Hyde and McDonald being disposed of and the record cleared of any claim to the land, that he (Huntress) be accorded the preferred right of entry on said lands.

Notwithstanding the foregoing judgment to some extent was anticipated by the petition, this proceeds on the record all of which had been made up before Huntress came into the case as a pretended contestant, and was in no way or manner aided by what he did. His acts had nothing whatever to do with bringing about the rejection of either the scrip claims or those of Hyde and McDonald. Besides, an application to file a declaratory statement is hardly subject to contest. He is, therefore, in no position to claim a preferred right of entry as a successful contestant, and his application to be so considered and treated must be denied. This disposes of all the claims, and asserted claims to the land, so far as disclosed by the record before me, and leaves the land in question open to disposal under the public land laws of the United States applicable thereto, and such is the judgment of this department.

The papers in the case are herewith returned.

Very respectfully, WM. F. VILAS, *Secretary.*

362 11930.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON ET AL., Respondents. } No. 150. Syllabus.

By virtue of the act of July 17, 1854—10 U. S. Statutes at Large, 304—there was issued to one Orillie Moreau, a mixed blood of the Sioux nation, five pieces of what is known as half-breed scrip, one of these pieces, for 160 acres, being described as No. 19 D.

This piece was located June 18, 1883, on unsurveyed lands in the Duluth district, by one Eaton, who held a power of attorney executed and delivered by the recipient of the scrip and her husband, she having married a man named Stram in the meantime, which power

authorized Eaton to locate the scrip and to do all acts necessary to secure a permanent and *bona fide* location thereof. After the land was surveyed and on July 21, 1885, the location was adjusted at the local office to governmental subdivisions on the application of the attorney-in-fact In a case instituted by one Hyde, who claimed the land under the pre-emption act, the Commissioner of the General Land Office held the Stram entry unauthorized and invalid, and that the same should be cancelled and set aside.

363 This decision was affirmed by the Secretary of the Interior Feb. 18, 1889. Hyde's claim was disposed of adversely to him at the same time. The land was subsequently patented by the U. S. to one Hicks under the homestead act, and Hicks' successors in interest brought this action to determine adverse claims against defendants, who assert ownership under the Stram entry. On findings of fact the court below held as conclusions of law that the plaintiff held the legal title to the land in trust for defendants in certain undivided shares, and that said defendants were and are the owners thereof, and ordered judgment accordingly.

Held, that the Secretary of the Interior acted without the authority of law when he decided the Stram entry or location to be unauthorized and invalid, and for that reason affirmed the order of the Commissioner cancelling the same.

Held, further, that the scripee or her successors in interest could not be deprived of their rights in the land by the assumption of a supervisory power by the officials in the Land Department or by the issuance of a patent to another.

Held, that the findings were supported by the evidence and justified the conclusions of law.

364 11980.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Appellant,
vs.
FRANK W. EATON ET AL., Respondents. } No. 150. Opinion.

Action to determine an adverse claim to three governmental subdivisions situated in St. Louis county. The court below found against plaintiff, the corporation, and ordered judgment in favor of the defendants as owners of undivided interests. The appeal is from an order denying a new trial and also from the judgment thereinafter entered. This case is another chapter of the controversy which has been in progress since 1883, in the courts and in the Interior Department of the General Government, over that well-known and very attractive section thirty. The particular tracts here involved were referred to in the case of Bishop Iron Co. *v.* Hyde, 66 Minn., 24, recently affirmed in the Supreme Court of the United States as those upon which had been located prior to the initiation of Hyde's claim, Sioux half-breed scrip No. 19 D, issued to a woman named

Moreau, which location was contested by Hyde, as therein set forth, a contest which resulted disastrously to both parties, the Secretary of the Interior finally sustaining the decision of the Commissioner of the General Land Office that the scrip location should be cancelled for non-compliance with the law,
365 and that Hyde had no rights as a pre-emptor, because he had previously contracted to sell and convey to a third party a portion of the land he proposed to acquire. In 1898 the land in question, a part only of that covered by the Moreau scrip, was patented by the U. S., under the homestead act, to one Hicks, and the plaintiff's claim of title is derived from him. The defendants assert ownership through and under the scrip location, their position being that the same was unlawfully cancelled by the officials of the Land Department; that the scripee could not be deprived of rights obtained under the location or entry; that the patent subsequently issued to Hicks inured to the scripee's benefit, and that the former and the plaintiff, who purchased with notice, held the land in trust for defendant. It is this trust which the court below enforced through the judgment appealed from. As we regard the case, the rights of the respective parties rest upon the legality of the rulings in the Land Department, the last being the affirmance by the then Secretary of the Interior of the order of cancellation as made by the Commissioner of the General Land Office August 4, 1888. This affirmance bore date February 18, 1889, and is unpublished. It was sustained by the successor in office of said Secretary. See 12 Land Dec., 157. In the Hyde case much of the history of this contest in the department is related. The testimony was taken before the local land officers, who were of the opinion that the scrip entries were valid. Certified copies of the testimony of the witnesses produced at this hearing were received in evidence in the court below. The written opinion of the local officers and the findings made by them, if any, were not there presented; nor was there introduced the findings of fact and conclusions of the Commissioner as they appeared, undoubtedly, in his decision of August 4, 1888; but parts or all of these findings were recited in the decision of affirmance made by the Secretary, of date February 18, 1889, a certified copy of the same having been received in evidence at the trial. From this copy and other testimony it appears that on June 18, 1883, one Eaton, as attorney-in-fact for the half-breed, who had in the meantime married a man named Stram, and who will hereinafter be called Mrs. Stram,
366 filed the scrip in question, with other pieces, upon tracts of unsurveyed land in the Duluth district. The necessary affidavits, with the powers of attorney and diagrams to locate and identify the tracts, were also filed. All of the steps required by the rules and regulations of the Land Department seem to have been taken in due form. July 21, 1885, upon the application of the attorney-in-fact, scrip No. 19 D was adjusted by the local officers to the governmental subdivisions herein involved, and other subdivisions, the land having been surveyed by the authorities just previously. The Hyde contest was commenced the day before. We now

come to facts which from the decision of the Secretary it appears were found by the Commissioner in decision affirmed by the Secretary, as before stated.

1. That accompanying the scrip and application to locate the same were what purported to be the original power of attorney, given May 25th, 1883, by the scripee and her husband to Frank W. Eaton; that with the application was an affidavit by said Eaton, setting out that he under said power of attorney had caused to be built upon the tracts upon which the scrip was located a house 14 by 16 feet, one story high, of timber, covered with split shingles, with doors and windows; that he also had cleared one-half acre of land, and also setting forth:

2. That said improvements were made under the personal direction of the scripee and for her personal use and benefit.

3. It was *b*ound by a clear preponderance the fact that said Eaton, by virtue of his power of attorney, employed Edward Byrne to make the improvements upon the tracts in question, and that Byrne secured the services of Powers and Clement to assist him in the matter.

4. That Eaton admits that the power of attorney under which he acted was executed by the scripee in blank; that he never saw the scripee until March 31st, 1886; never saw the land, and did not know whether said scripee ever saw it or not; that the deed of confirmation by the scripee appears, so far as she and Eaton are
367 concerned, to remove any objection to the acts previously performed by the latter under and by virtue of his said power of attorney.

5. That in the record *are* what purport- to be an original power of attorney given by the scripee and her husband to Leonidas Merritt, granting him full power and authority to enter upon and take possession of any and all pieces or parcels of land in the State of Minnesota which they owned or might thereafter acquire or become interested in by virtue of the location of the scrip in question, to prosecute and defend any suit at law in the courts of said State, and to grant, bargain, sell, demise, lease, convey, and confirm said land, or any part thereof, by deed, conveyance, demise, or lease, in the same manner as if performed by them individually.

6. That on March 31st, 1886, the scripee and her husband joined in a deed of confirmation ratifying and confirming all and singular the acts of Frank W. Eaton and Leonidas Merritt relative to the tracts in question done and performed by them under the respective powers of attorney given as hereinbefore described.

The decision contains further recitals of findings which appear to us to be of no value when passing upon the main question before us and we shall have no occasion to again refer to them except incidentally. The decision proceeds, after stating facts, as follows, the italics being our own:

"This would seem on its face to point to an adjudication in favor of the scrip locations, but your office decision further proceeds to say that the only other question left to pass upon touching the legality to these locations is, whether the power of attorney given

by the scripee to Frank W. Eaton, by virtue of which he made the location, *could carry with it, under the law, the power and authority to make the improvements*, which were necessary as a prerequisite to valid location on the scrip on unsurveyed land. On this question your office decision concludes that since the evidence shows clearly that the scripee in this case never saw the land or the improvements or had anything whatever to do therewith, and since the cir-
368 *cular referred to supra requires that the Indians shall have a direct connection with the land, and claim the same for his or her personal use*, the scrip locations are not valid and should be cancelled as speculative and made with an evident intent to evade the law rather than to comply in good faith with legal requirements."

The circular referred to was one issued in 1864 by the Land Department to the local officers, in which the latter were advised that scrip could be located:

4th. "Upon any other unsurveyed land, not reserved by Government, upon which they have respectively made improvements."

5th. "When not located by the reservee in proper person, the application to locate must be accomp*lish*ed by the affidavit of the agent that the reservee is living, and that the location is made for the sole use and benefit of said reservee.

The land selected in satisfaction of a certificate of scrip must of course be located in the name of the party in whose favor the scrip is issued, and the location may be made by him or her in person or by his or her guardian or duly authorized agent."

The Secretary then proceeds to consider the facts "epitomized," as he claims, making several statements which are not founded upon any evidence now before us, and then he characterizes the improvements as "scarcely deserving the name."

In all essential particulars, said the Secretary, the case is like that of Allen *v.* Merritt, decided by him on the same day—8th Land Dec., 207; review denied, 12 *ib.*, 108—and, following the ruling in that case, the Secretary held the location invalid. If, on the facts as found, the Secretary correctly interpreted and applied the law which governs in such cases, his decision must be upheld. But if there was error in the construction of the statute, the decision is of no binding force in this litigation. Before considering the law under which the scrip was located let us briefly refer to the facts found by the Commissioner of the General Land Office, according to the Secretary's decision. The contents of the affidavits as
369 to the extent of the improvements made by Eaton are recited and inferentially, at least, are found to be true.

These improvements consisted of a log house 14 by 16 feet in size, one story high, covered with split shingles, with a door and place for a window. Half an acre was cleared. This was done in June under direction of Eaton, who held a power of attorney executed by Mrs. Stram and her husband less than a month before, to locate this scrip and "to do all acts necessary to secure a permanent and *bona fide* location thereof." We are clearly of the opinion that from the Secretary's decision it appears that the Commissioner found these improvements to have been made prior to the location; and

it also appears that the Commissioner found that they were made by persons employed by Eaton for the purpose and by virtue of his power of attorney, the question being, as stated by the Secretary, whether the power to locate carried with it, under the law, the authority to make the improvement required to be made upon the location of scrip on unsurveyed lands. As the scripee never saw the lands or the improvements, had no direct connection with the land, and never claimed the same for her own personal use, it was held that the location was invalid, and the cancellation seems to have followed as a consequence.

The law under which scrip was issued to the half-breeds or the mixed bloods of the Sioux nation was the act of July 17, 1854, 10 U. S. Statutes at Large, 304.

The act is not complicated and in some respects is quite indefinite, but it empowered and authorized the President to cause to be issued to certain mixed bloods certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of the Pepin reservation among them *pro rata*. There was a provision that these certificates or scrip might be located upon the lands within the reservation or upon other unoccupied lands subject to pre-emption or to private sale—that is, lands which had been surveyed, and also upon unsurveyed lands not reserved by the Government, "upon which the applicants have respectively made improvements." There was a provision that these certificates or scrip should not embrace more than 640 nor less than 40 acres
370 each, and they were to be equally apportioned among those entitled. To ascertain who was entitled, reference must be had to the 9th article of the treaty of Prairie du Chien, of date July 15, 1830, sec. 7, U. S. Statutes at Large, 331, from which it will appear that in a very general manner the reserved or Pepin tract was bestowed upon the half-breeds of the Sioux nation, they to hold as all other Indian titles were held. Thereafter, and as empowered by the 1854 act, the President caused certificates or scrip to be issued to these mixed bloods indiscriminately and without reference to age, sex, or other conditions. The result was that old and young, adults and minors, male and female, those that had but little Indian blood in their veins and those in whom such blood greatly prevailed, were the recipients. And this fact is not to be ignored when discussing the correctness of the Secretary's views as found in his decision of February 8, 1889. Under the law there was issued to each one of 640 persons, Mrs. Stram being one of the 640, 5 pieces of scrip thus described: 1 A, 40 acres; 1 B, 40 acres; 1 C, 80 acres; 1 D, 160 acres; 1 E, 160 acres, a total of 480 acres each. To each one of 38 persons there was issued one piece of 40 acres and two for 160 acres, in all, 360 acres to each. And this is another fact to be kept in mind.

There was also another proviso in the act of July 17, 1854, "that no transfer or conveyance of any of said certificates or scrip shall be valid." It is clear that this is a positive and emphatic prohibition on the assignability of the certificate- or scrip, but it is not a prohibition upon a conveyance of the land upon which scrip had been lo-

cated. As was said in Gilbert *v.* Thompson, 14 Minn., 514, "no restraint is imposed upon the right of property in the land after it is acquired by location of the scrip. In the scrip itself the half-breed had nothing which he could transfer to another, but his title to the land, when perfected under it, was as absolute as though acquired in any other way. It follows that any attempt to transfer the scrip, directly or indirectly, would be of no effect as a transfer. The title to the scrip would remain in him and the title to the land acquired by it would remain in him, just as though no such attempt
371 had been made.

Such attempt to transfer would not involve any moral turpitude nor the breach of any legal duty, as is the case with an attempt to transfer a pre-emptive right. It would be simply ineffectual, because the scrip is not transferable."

Further considering the law, it is well to look at the construction placed upon it by the officers of the Interior Department soon after scrip was issued to the beneficiaries, a construction contemporaneous with the passage of the law. We find that immediately after its issuance a circular was promulgated by the Commissioner of the General Land Office for the information and guidance of the local officers, a clause of which read that locations might be made "upon any unsurveyed land, not reserved by Government, upon which they have respectively made improvements. Where the scrip may be located on unsurveyed lands outside the reservation on which the half-breed has made improvements and which is not reserved by the Government, his application for location should be accompanied by a diagram and description, denoting the natural objects and distances, so as to fix with certainty the exact locality wanted, which serves as the best notice in our power to settlers that conflict may be avoided and enable you, when the public surveys are made, to designate the subdivisions embracing the location."

1 Lester's Land Laws, 626.

We have discovered that it was required, not that the improvements upon unsurveyed lands must be of a reliable or permanent character or that they should be made by the scrip*ee* or under his personal direction, but that the application should be accompanied by a diagram and description, that the exact locality might be designated, and thus, in connection with the improvements upon the ground, conflicts might be avoided between claimants, and the locations more easily and certainly adjusted when surveys were actually made.

The making of improvements by or under the scrip*ee*'s immediate direction was not made of prime importance by the Commissioner when preparing these instructions. The practice and custom
372 of making scrip entries was definitely understood and well settled in the 17 years which followed prior to the issuance of another circular in the year 1864, emanating from the same office and for a like purpose, and from this we have hereinbefore quoted. In this circular it was stated that where a half-breed for himself may make actual settlement his improvements will be notice on the

ground to any other settler; and we are of the opinion that the purpose of this feature of the law, requiring improvements to be made where the scrip was located on unsurveyed lands, must have been that visible notice by work done on the ground might thereby be given to other persons of the scripee's prior right, and thus prevent collision and conflict. The language as to improvements was general and vague. None were required where surveyed lands were located, and it is very evident that this requirement was for a minor purpose. Obviously it was not the design of the law to compel actual settlement or residence upon the land, for had it been the language would have been plain and unambiguous. This purpose was accomplished wherever the improvements were of such a character as to be notice and their value or extent was of little consequence. That in this case they were ample as notice ought not to be questioned. The entire purpose of the act itself seems to have been to promote and secure an exchange of the interests of the mixed bloods in the reservation, which was becoming valuable for actual settlers, for certificates or scrip which would be available for the acquirement of title in fee to specific parcels of land there or elsewhere on the public domain. It was proposed to compensate the mixed bloods who surrendered their rights or claims under the treaty in a manner which would be of some value, and it has been held that the fact that the Government saw fit to make the scrip as such non-assignable does not operate to prevent the beneficiary from making an agreement before location or giving power to convey the land when the scrip shall have been located and the land entered.

We need not cite decisions in support of this proposition, for they are abundant, Federal and State, nor need we stop to consider why
Congress saw fit to declare that the scrip should not be as-
373 signable and yet failed to deprive the scripee of the power of
alienation immediately after the location and in pursuance of a bargain previously made. It is enough to know that the prohibition related solely to assignments of the scrip itself. So that, as before stated, the question is, was the land validly appropriated by the location of the scrip in the name of Orillie Stram, to whom it had been issued with four other pieces, and the only invalidity found by the Commissioner of the General Land Office and the Secretary was that Mrs. Stram had not seen the land or improvements and did not have direct connection with either, and never claimed the same for her personal use. The rules and regulations of the Land Department had not been complied with, it was stated, and it was held that this was sufficient to justify the cancellation.

Under the decisions of the Land Department, as well as those of the courts, a scripee can empower another to do all things necessary as a condition precedent to a location and then to actually locate. The improvements were made under the direction of a duly authorized agent, and then the entry was made in the name of the scripee by the same agent or attorney-in-fact. Mrs. Stram did not complain of this entry and urge that her rights had been disregarded. Upon the other hand, she ratified and confirmed every act performed by her attorneys-in-fact by a properly executed deed, executed in

March, 1886. Now, when we examine some of the provisions of the law we are led to ask, could it have been the intention that each person to whom certificates or scrip was issued should see the land, in person, upon which each piece was to be located, or should, in person, see the improvements or claim the same for personal use, or be directly—that is, personally—connected with either or both?

Under the law the President was authorized to do what was actually done, issue to each person entitled several pieces of scrip of different sizes or acreage. Was it expected that each of these persons should be personally connected with the several and separate improvements required to be made if all of the pieces were located on unsurveyed lands, and would have to claim the same for
374 personal use? Surely not. This law contemplated and there *was* actually issued several pieces of scrip to each of a large number of minors. Babes in arms were held to be entitled and to them scrip was issued, and in many cases located before the minors reached majority, as might reasonably be expected. With these facts before us can it be held that Congress thought or intended that these minors would be required by a construction of the law to personally supervise the selection of from three to five tracts of land on which to locate their pieces of scrip, or that they would have to be directly connected with each of these locations, or in case unsurveyed lands were desired they would have to claim the necessary improvements as their own? In other words, do not these facts indicate to a moral certainty that it never occurred to the members of Congress that the construction placed on this law by the Secretary would be given to it at any time, much less after thirty years of wholly different construction, and a construction also which received judicial recognition and approval? See Gilbert *vs.* Thompson, *supra;* Hope *v.* Stone, 10 Minn., 141; Marks *v.* Dickson, 20 How., U. S., 551. We are confident that they do so indicate, and that the requirements found in the circular of May 28, 1878, were not in accordance with the law, and were therefore unauthorized. The act itself never required that the improvements should be of a certain kind or value or that the scripee should be directly connected with the land. It quite conclusively appears to the contrary when we consider the facts before referred to unless we take the position that the legislative branch of the General Government intended to confer upon the mixed bloods in exchange for their interest in the reservation scrip which would be of no value unless the recipients made personal selections, were directly connected with the locations and improvements, and made claim to both for their own use and benefit.

It is urged that Eaton's entry amounted to an evasion of that part of the law which forbade an assignment of the scrip, the well-known rule being evoked that an act which cannot be done directly cannot be accomplished indirectly. But if an agent can be authorized by the scripee to do all acts that may be necessary as a condition
375 precedent to a location, and may also be authorized to carry the scrip to the land office and complete the entry, and this, it is well settled, may be done, why is not the prohibition evaded quite as completely as the Secretary claimed it was in this case?

The evasion is in every case where a contract of sale is made or contemplated, if it is in one. Locations under such circumstances have been repeatedly, almost universally, upheld, the officials of the department declaring, however, that the scripee cannot assign the scrip, that the location must be in the name of the person to whom the same was issued, and that the patent must be so issued, but further holding that, as the power to alienate is unrestricted by the law, an agreement to sell is not a matter for determination in the Land Department. It seems very apparent that the effect and validity of such an agreement must be left to the arbitrament of the courts, and not to the decisions of the Government officials.

We have not discussed the point made by counsel that, as the method adopted by Mr. Eaton was in accord with the long-continued practice of the department, as set out in its circular of 1857, the action of the Commissioner and the Secretary should be set aside as unwarranted. We think it unnecessary; nor do we consider at length the further point that the location of July 21, 1885, after the lands had been surveyed and the plats returned, was a valid location, even if the earlier one was invalid for the reasons assigned by the officials. It is true that the Hyde claim was the only one intervening when this scrip was adjusted or again located; and that claim was corrupt and invalid, as has been finally determined; so when the application of July 21 was made there was no valid existing adverse right which had attached and which stood in the way of a location of the scrip as upon surveyed lands, no improvements being necessary. There was no forfeiture of the scrip by the previous attempt to locate. If invalid, it was nothing but an attempt. No moral turpitude or breach of any legal duty was involved in the first location. If Mr. Eaton, as the agent, had there expressed a desire to withdraw and relinquish all rights acquired previously and to lay
376 that particular piece of scrip on the land in question, as of that day, would not his right so to do seem unquestionable? And would not the obligation of the local officers to permit this act to be done appear to be beyond doubt? If this be true, why was not the legal effect of the adjustment a location of the scrip upon surveyed lands, there being no valid claim or right intervening and in conflict? The application then made was sufficient in form for an original location. If the scripee, Mrs. Stram, either in person or by agent, could that day have successfully applied for the land had she never made any previous attempt to obtain it, why should the application be rejected? Surely not on the ground that she had tried before and failed while the land was unsurveyed. Our conclusion is that upon the facts as found, hereinbefore stated, the Commissioner of the General Land Office and the Secretary of the Interior erroneously construed the law and imposed unwarranted conditions. The decision of the latter appears to have been predicated upon a circular of instructions, not upon a statute. It was error to hold that under the act in question it was vital that the scripee should see the land or the improvements prior to the entry, and that an agent could not act in her behalf when duly authorized not only in selecting the land itself, but in making such improvements

as would in themselves and without regard to their value be notice on the ground of the assertion of a prior right. It was error to hold that the scripee had nothing to do with these improvements, for she had empowered an attorney-in-fact to make them. It was error to hold that the scripee must have direct connection with the land; and if, by his decision that the scripee must claim the land for her own personal use, the Secretary meant that such claim must be formally made or made in good faith or must be established by proof other than or different from that before the Land Department in this particular case, he was in error. There was not even an intimation in the law that the scripee should personally inspect or select the land or should make in person or even examine the improvements. Scrip was issued in from three to five separate and distinct pieces and of different
377 acreage. It was issued to persons who were old and decrepid, physically and permanently incapable of complying with the requirements established by the Secretary. Was the fact that they were old and disabled to be used to their injury, and were they to have nothing but unavailable pieces of paper? Certificates of scrip were issued to infants who would not reach a suitable age for obeying the behests of the land officials for a score of years. Were they expected to act through guardians or other agents and have some benefit of the provisions of the law, or were they expected to wait until majority came to them, and then to comply with the circular requirements? No distinction or discrimination was made in the law between the adult and the minor, — department could impose none by requiring less of the minor making a location than of the adult; nor did the law require that the land on which the scrip was located must be selected by the mixed bloods for personal use, or even that a claim of this kind should be made. In fact, as we have seen, the inference to be drawn from its language and from what was done at and about the time is to the contrary, and the Secretary erred in holding, upon the facts as found, that the scripee had no interest whatever in the location made by her attorney-in-fact. Such a holding is, in effect, deciding that every piece of scrip issued to the mixed bloods which cannot be used by the recipient for his or her own personal benefit and for the acquirement of land for his or her own personal use could not be used at all and was of no value.

Finally, we hold that on the facts and the law the location in behalf of Mrs. Stram was proper and valid. It was error on the part of the officials of the Land Department to cancel the location and entry. Mrs. Stram or her successors in interest could not be deprived of her rights in the land by the assumption of a supervisory power by these officials or by the issuance, under their direction, of a patent to another person. The act of July 17, 1854, did not provide for the issuance of a patent, and the title to the property passed to Orillie Stram, *née* Moreau, by virtue of the location. The findings of fact justified the conclusions of law in the court below, and the judgment is affirmed.

COLLINS, *J.*

378 12016.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY CO., Substituted for THE GERMANIA Iron Co., Appellant,
vs.
FRANK W. EATON ET AL., Def'ts; FRANK W. Eaton *et al.*, Respondents.
} No. 213. Opinion.

Per Curiam:

All questions involved in this case are disposed of in Midway Co. *v.* same defendants. Opinion filed herewith.

Judgment affirmed.

379 [Endorsed:] State of Minnesota, supreme court. The Midway Company, appellant, *vs.* Frank W. Eaton *et al.*, respondents. Opinion & syllabus. Copy.

380 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY, Substituted for THE GERMANIA Iron Company, Appellant,
vs.
FRANK W. EATON ET AL., Defendants; FRANK W. EATON, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Respondents.
} No. 213.

Pursuant to an order of court, duly made and entered in this cause on the twenty-ninth day of May, A. D. 1900, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the eleventh judicial district, sitting within and for the county of St. Louis, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondents above named do have and recover of said The Midway Company, substituted for The Germania Iron Company, appellant herein, the sum and amount of forty-three and $\frac{45}{100}$ dollars ($43.45), costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this 29th day of May, A. D. 1900.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	
Printer's fees	6.95
Clerk's fees, supreme court	11.50
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$43.45

381 [Endorsed:] 12016. State of Minnesota, supreme court. Transcript of judgment. Filed May 29, A. D. 1900. D. F. Reese, clerk.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 29th day of May, A. D. 1900.

D. F. REESE, *Clerk.*

382 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY (Substituted for The Germania Iron Company), Appellant,

vs.

FRANK W. EATON ET AL., Defendants; Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

No. 213. Appeal from District Court, Eleventh Judicial District, County of St. Louis.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1900, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondents above named have judgment accordingly.

Entered May 29th, A. D. 1900.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.
Attest: D. F. REESE, *Clerk.*

[Endorsed:] No. 12016. State of Minnesota, supreme court. Copy of order for judgment. Filed May 29, A. D. 1900. D. F. Reese, clerk.

383 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1900.

WEDNESDAY MORNING, 9.30 O'CLOCK, *April 25th, A. D.* 1900.

Court convened pursuant to adjournment, all the justices being present.

THE MIDWAY COMPANY, Substituted for Germania Iron Company, Appellant,
vs.
FRANK W. EATON ET AL., Respondents.
} Cal. No., 213; Reg. No., 12016.

This cause came on to be heard this day upon the return to the appeal herein.
Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.
A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.
Attest: D. F. REESE, *Clerk.*

[Endorsed:] 12016. State of Minnesota, supreme court. Copy of minutes of argument. Filed May 29, A. D. 1900. D. F. Reese, clerk.

384 [Endorsed:] No. 12016. State of Minnesota, supreme court. The Midway Co., substituted for Germania Iron Co., appellant, against Frank W. Eaton *et al.*, respondents. Judgment-roll. Filed May 29, 1900. D. F. Reese, clerk.

385 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, *Office of Clerk of Supreme Court,* } *ss:*

I, Darius F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-

roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The Midway Company, substituted for the Germania Iron Company, appellant and plaintiff in error, against Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, respondents and defendants in error, including the opinion of the said supreme court therein, as appears from the original files and records of said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error and of the bond on the writ of error and approval thereof and the assignments of error as the same remain on file and of record in said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

In witness whereof I have hereunto set my hand and seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 6th day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

DARIUS F. REESE,
Clerk of the Supreme Court of the State of Minnesota.

386 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1900.

THE MIDWAY COMPANY (Substituted for the Germania Iron Company), Plaintiff in Error,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

To the honorable chief justice of the supreme court of the State of Minnesota:

The petition of the Midway Company (substituted for the Germania Iron Company) respectfully shows that on the 29th day of May, A. D. 1900, the supreme court of the State of Minnesota rendered a judgment against your petitioner in a certain cause wherein your petitioner, The Midway Company (substituted for the Germania Iron Company), was plaintiff and appellant and the said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf were defendants and respondents, as will appear by reference to the records and proceedings in said cause; that said supreme court of the State of Minnesota is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error, under the statute of the United States, to wit, sec. 709 of the Revised Statutes

of the United States, because in said suit and said judgment of the supreme court of the State of Minnesota there was drawn in question the validity of an authority exercised under the United
387 States and the decision of the said supreme court of the State of Minnesota was against the validity of said authority, and because in said suit your petitioner claimed title under a statute of the United States and the decision of the supreme court of the State of Minnesota in said suit was against the title of your petitioner claimed under said statute, all of which appears by the records of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and he will ever pray, etc.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY), *Petitioner.*
WALTER AYERS, *Attorney for Petitioner,*
208–209 *First National Bank Building, Duluth, Minnesota.*

STATE OF MINNESOTA, *County of St. Louis,* } ss:

Walter Ayers, being duly sworn, upon oath deposes and says that he is attorney for the petitioner named in the foregoing contention, and that the contents thereof are true of his own knowledge.

WALTER AYERS.

Subscribed and sworn to before me this 2d day of June, A. D. 1900.

H. A. DANEE,
[NOTARIAL SEAL.] *Notary Public, St. Louis County, Minnesota.*

388 [Endorsed:] 12016. State of Minnesota, supreme court, October term, A. D. 1900. The Midway Company, (substituted for the Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton *et al.*, respondents. Petition for writ of error to U. S. Supreme Court. Walter Ayers, attorney for plaintiff in error, 308–309 1st Nat'l Bank bldg, Duluth, Minnesota.
Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

389 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1900.

THE MIDWAY COMPANY (Substituted for the Germania Iron Company), Plaintiff and Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

Order.

Upon motion of Walter Ayers, Esq., attorney for appellant, and upon filing a petition for a writ of error and an assignment of errors—

It is ordered that a writ of error be, and hereby is, allowed, to have reviewed in the Supreme Court of the United States the judgment heretofore entered in the above-entitled cause, and that the amount of the bond on said writ of error be, and the same is hereby, fixed at five hundred dollars ($500.00), the same to operate as a supersedeas.

Dated June 4th, A. D. 1900.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

390 [Endorsed:] 12016. State of Minnesota, supreme court, October term, A. D. 1900. The Midway Company (substituted for Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Order allowing writ of error. —— ——, attorney for plaintiff in error, 308–309 1st Nat'l Bank bldg., Duluth, Minnesota.

Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

391 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Midway Company (substituted for the Germania Iron Company), appellant and plaintiff in error, and Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, respondents and defendants in error, wherein was drawn in question the validity of an authority exercised under the United States and the decision was against its validity, and wherein was drawn in question the construction of a statute of the United States and the decision was against the right and title specially set up or claimed under such statute, a manifest error hath happened, to the great damage of the said The Midway Company (substituted for the Germania Iron Company), plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, on the third day of July next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme
392 Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the fourth day of June, in the year of our Lord one thousand nine hundred.

[Seal U. S. Circuit Court, Third Division, Dist. of Minnesota.]

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

Allowed (to operate as supersedeas).

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

393 [Endorsed:] 12016, original. Supreme Court of the United States. The Midway Company (substituted for the Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Writ of error. —— ——, attorney for plaintiff in error, 308–309 1st Nat'l Bank bldg., Duluth, Minnesota.
Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

394 UNITED STATES OF AMERICA, *ss:*

To Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The Midway Company (substituted for the Germania Iron Company) is the plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this fourth day of June, in the year of our Lord nineteen hundred.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Service of the within citation and receipt of a copy thereof admitted this 5th day of June, 1900.

J. L. WASHBURN &
W. D. BAILEY,
Attorneys for Leonidas Merritt, Merrill M. Clark, and Richard H. Fagan, Defendants in Error and Respondents in Lower Court.

TOWNE & HARRIS,
Attorneys for Frank W. Eaton in Lower Court.

TOWNE & HARRIS,
WM. B. PHELPS,
Attorney- for Margaretha Lonstorf in Lower Court.

395 [Endorsed:] 1206, original. Supreme Court of the United States. The Midway Company (substituted for the Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Citation. ——— ———, attorney for plaintiff in error.

Endorsed: Filed Jun 4, 1900. Darius F. Reese, clerk.

396 STATE OF MINNESOTA,
Department of Insurance.

ST. PAUL, MINN., *June 4th*, 1900.

I, J. A. O'Shaughnessy, insurance commissioner of the State of Minnesota, do hereby certify that the Fidelity and Deposit Company of Maryland is a corporation organized under the laws of the State of Maryland, and is authorized under its charter to guarantee fidelity of persons holding places of public or private trust; to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions and proceedings at law; that it appears to my satisfaction, from sufficient evidence on file in my office of commissioner of insurance of said State of Minnesota, that said corporation, the Fidelity and Deposit Company of Maryland, has furnished the same security which is required by law and the regulations of my department of life insurance companies, under the provisions of sections 355 to 358, inclusive, of chapter 34, General Laws of the State of Minnesota of one thousand eight hundred and seventy-eight (1878).

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal of Ins. Dep'tm't, Minnesota.]

J. A. O'SHAUGHNESSY,
Insurance Commissioner.

397 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY (Substituted for the Germania Iron Company), Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lonstorf, Respondents.

[Cancelled internal-rev. stamp, 5c.]

Know all men by these presents that we, The Midway Company (substituted for the Germania Iron Company), a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation organized under the laws of Maryland, as surety, are held and firmly bound unto Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf in the full and just sum of five hundred dollars ($500.00), to be paid to the said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, their certain attorneys, exec-

utors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of May, in the year of our Lord nineteen hundred.

Whereas lately, at a session of the supreme court of the State of Minnesota, in a suit pending in said court between The Midway Company, plaintiff and appellant, and Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, defendants and respondents, a final judgment was
398 rendered against the said plaintiff and appellant, and said plaintiff and appellant, The Midway Company (substituted for the Germania Iron Company), having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the foregoing suit, and a citation directed to said Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf, citing and admonishing them to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof:

Now, therefore, the condition of the above obligation is such that if the said The Midway Company (substituted for the Germania Iron Company) shall prosecute its said writ of error to effect and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

In witness whereof the said The Midway Company (substituted for the Germania Iron Company) has caused these presents to be signed by its president and its corporate seal to be affixed, and the said Fidelity and Deposit Company of Maryland has caused these presents to be signed by a member of the local board of directors of Duluth, Minnesota, and its corporate seal to be hereto affixed the day and year aforesaid.

[Corporate Seal.]

THE MIDWAY COMPANY,
By ANDREAS M. MILLER, *President.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HENRY S. MAHON,
A Member of the Local Board of Directors for Duluth, Minnesota.

[Corporate Seal.]

Attest: ROS L. MAHON, *Agent.*

Signed, sealed, and delivered in presence of—
REED J. LENHE,
JEROME S. BERNHEIMER,
As to Midway Company.
A. L. AGATIN,
J. LANETOT,
As to surety.

STATE OF NEW YORK, } ss:
County of New York, }

On this 29th day of May, A. D. 1900, before me, a notary
399 public within and for said county, personally appeared Andreas M. Miller, who, being by me first duly sworn, deposes and says that he is the president of The Midway Company, a corporation, and one of the obligors in the foregoing document; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Andreas M. Miller acknowledged the same to be the free act and deed of said corporation.

[NOTARIAL SEAL.] REED P. LENHE,
Notary Public, N. Y. Co., #24.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

On this 1st day of June, A. D. 1900, before me, a notary public, personally appeared Henry S. Mahon, who, being by me duly sworn, deposes and says that he is a member of the local board of directors for Minnesota of the Fidelity and Deposit Company of Maryland; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Henry S. Mahon acknowledged the said instrument to be the free act and deed of the said corporation.

[NOTARIAL SEAL.] A. L. AGATIN,
Notary Public, St. Louis Co., Minn.

400 [Endorsed:] 12016. State of Minnesota, supreme court, April term, A. D. 1900. The Midway Company (substituted for the Germania Iron Co.), appellant, *vs.* Frank W. Eaton *et al.*, respondents. Bond on writ of error to Supreme Court of U. S. I approve of the within bond and the sufficiency of the surety thereon. Dated June 4, 1900. Chas. M. Start, chief justice supreme court, State of Minnesota. —— ——, attorney for appellant, 308–309 First Nat'l Bank building, Duluth, Minn.

Endorsed: Filed Jun- 4, 1900. Darius F. Reese, clerk.

401 Supreme Court of the United States.

THE MIDWAY COMPANY (Substituted for the Germania Iron Company), Plaintiff in Error and Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, Richard H. Fagan, and Margaretha Lornstorf, Respondents and Defendants in Error.

Comes now The Midway Company (substituted for the Germania Iron Company), plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and

judgment of the supreme court of the State of Minnesota in the above-entitled cause and assigns error thereto as follows:

1. The court erred in holding that the Land Department of the United States had no authority to cancel the locations of the Sioux half-breed scrip issued under the act of Congress approved July 17th, 1854, and under which locations the defendants in error claim title.

2. The court erred in holding that the plaintiff in error holds the title derived under the patent issued by the United States for the premises in controversy in said action in trust for the defendants in error.

3. The court erred in holding that the defendants in error were and are the owners of the premises in controversy in said action.

4. The court erred in holding that the findings of fact of the court below justified its conclusions of law.

402 5. The court erred in holding that the title to the premises in controversy in this action passed to Orillie Stram, *née* Moreau, by virtue of the location of Sioux half-breed scrip under which the defendants in error claim title.

6. The court erred in not holding that the findings of fact of the Secretary of the Interior set forth and embodied in his decision of February 18th, 1889, were final and conclusive.

7. The court erred in not holding that the findings of fact of the Secretary of the Interior set forth and embodied in his decision of February 18th, 1889, were sufficient to warrant and sustain the action of the Land Department of the United States in cancelling the Sioux half-breed scrip locations under which the defendants in error claim title.

8. The court erred in affirming the judgment of the court below.

9. The court erred in not reversing the judgment of the court below and directing judgment for the plaintiff in error and against the defendants in error, as prayed in its complaint.

Wherefore the said The Midway Company, plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of the State of Minnesota entered in the above-entitled cause.

THE MIDWAY COMPANY,
Plaintiff in Error,
By WALTER AYERS, *Its Attorney.*

403 [Endorsed:] Original. Supreme Court of the United States. The Midway Company (substituted for the Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton *et al.*, defendants in error. Assignment of errors. —— ——, attorney for plaintiff in error.

404 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

THE MIDWAY COMPANY (Substituted for the Germania Iron Company), Appellant,
vs.
FRANK W. EATON, LEONIDAS MERRITT, RICHARD H. FAGAN, and Merrill M. Clark, Respondents.

Assignments of Error.

1. So much of the second finding of fact as finds that the defendant Frank W. Eaton had, prior to the attempted location of said scrip, been duly empowered by Orillie Stram as her attorney-in-fact for the purpose of locating said scrip is not sustained by the evidence.

405 2. So much of the third finding of fact as finds that the scrip herein referred to was adjusted upon the premises therein described upon application of the said Orillie Stram is not sustained by the evidence.

3. So much of the third finding of fact as finds that said certificates of scrip were duly located upon said surveyed lands and the said lands as surveyed lands were taken and appropriated under and by virtue of said scrip is not sustained by the evidence.

4. So much of the third finding of fact as finds that at the time of the adjustment of said scrip referred to in said finding that there were not, nor were there at the time when the scrip was located on said unsurveyed lands, nor at any other time, any valid adverse claims to said lands is not sustained by the evidence.

5. The court erred in making so much of the fifth finding of fact as purports to state the reasons of the Secretary of the Interior for the decision therein referred to, because the reasons as so stated by the court are at variance with the said decision itself, which is made a part of the findings, and are not sustained by the evidence.

5½. So much of the tenth finding of fact as finds "that the improvements caused to be erected by the said Frank W. Eaton upon the said premises consisted of a house about 14 by 16 feet in

406 size," in so far as the same in anywise contradicts or modifies the findings of the Secretary of the Interior in his decision of February 18, 1889, is not sustained by the evidence.

6. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the scrip referred to in the decision of said Secretary had passed through many hands or through any hands before coming into the hands of the said Frank W. Eaton is not sustained by the evidence.

7. So much of the tenth finding of fact as found that it appeared from the evidence before the Secretary of the Interior that the powers of attorney to said Frank W. Eaton were executed by the said Stram about one week before the location of the said scrip by the said Frank W. Eaton is not sustained by the evidence.

8. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the said scripee never saw the lands is not sustained by the evidence.

9. So much of the tenth finding of fact as found that it did not appear from the evidence before the Secretary of the Interior that the scripee had sold the said scrip long prior to the location thereof is not sustained by the evidence.

10. So much of the tenth finding of fact as found that it did not appear from the evidence before the said Secretary that for a
407 long time the scripee directly and positively repudiated Eaton & Merritt as her attorneys-in-fact, denying that they acted for her in any capacity whatever, is not sustained by the evidence.

11. The court erred in its first conclusion of law.

12. The court erred in its second conclusion of law.

13. The court erred in its third conclusion of law.

14. The court erred in its fourth conclusion of law.

15. The court erred in denying the plaintiff's motion for a new trial made upon the ground that its said decision was not justified by the evidence.

16. The court erred in denying the plaintiff's motion for a new trial, made upon the ground that its said decision was contrary to law.

17. The judgment appealed from is in all respects erroneous and not warranted by the facts found save and excepting only that portion thereof which adjudges and decrees that none of the other defendants are entitled to any right, title or interest in or to the said tract of land, and said judgment should be reversed and judgment directed in favor of the appellant and against the respondents as prayed for in the complaint.

408 In the Supreme Court of the United States.

THE MIDWAY COMPANY, Substituted for the Germania Iron Company, Plaintiff in Error,

vs.

FRANK W. EATON ET AL., Respondents.

313. O. T., 1900.

Stipulation.

It is stipulated in the above-entitled cause that the Exhibit "A" referred to at the bottom of page 180 of the printed record in the court below may be printed and added to the record for the Supreme Court of the United States, at the end thereof or at such other place therein as to the clerk of said court shall seem most convenient.

Dated September 11th, A. D. 1900.

WALTER AYERS,
Attorney for Plaintiff in Error.
CHARLES A. TOWNE,
Attorney for Respondents Eaton & Lonstorf.
JED. L. WASHBURN,
Attorney for Respondents Merrill M. Clark, Richard H. Fagan, and Leonidas Merritt.

[Endorsed:] Supreme Court of U. S. # 313, O. T., 1900. The Midway Co., substituted for the Germania Iron Co., plaintiff in error, *vs.* Frank W. Eaton *et al.*, respondents. Stipulation. Original.

409 [Endorsed:] File No., 17,798. Supreme Court U. S., October term, 1900. Term No., 313. The Midway Co., substituted, &c., P. E., *vs.* Frank W. Eaton *et al.* Stipulation in regard to printing record. Office Supreme Court U. S. Filed Sep. 14, 1900. James H. McKenney, clerk.

Endorsed on cover: File No., 17,798. Minnesota supreme court. Term No., 313. The Midway Company (substituted for the Germania Iron Company), plaintiff in error, *vs.* Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan, and Margaretha Lonstorf. Filed June 11th, 1900.

No. 81.

FILED
OCT 11 1901
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

By. W. Ayers for P. C.

OCTOBER TERM, 1900.

Filed Oct. 11, 1901.

No. ~~313.~~ 81.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY),
Plaintiff in Error.

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETHA LONSTORF,
Defendants in Error.

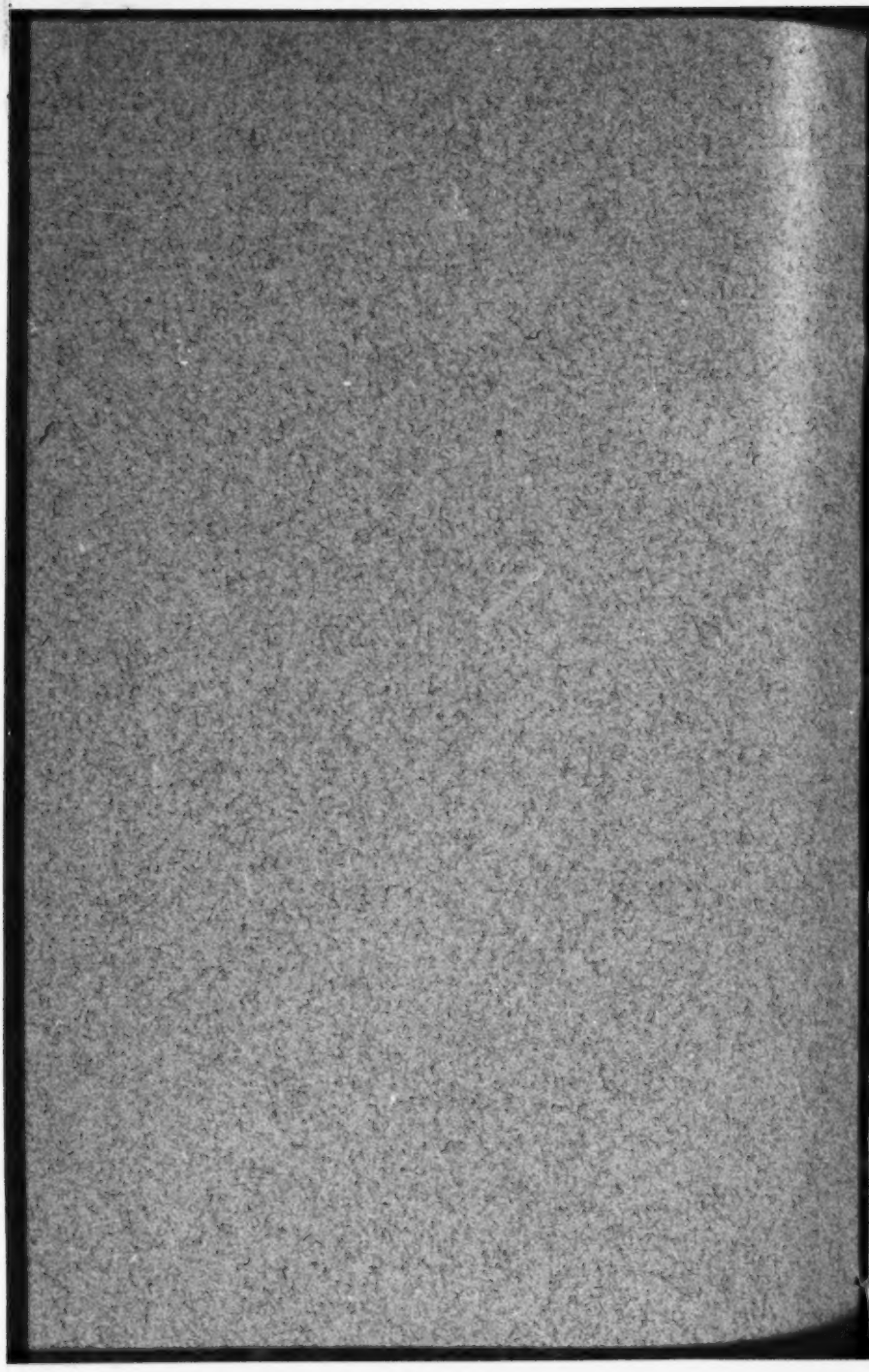
IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

WALTER AYERS,
Attorney for Plaintiff in Error.

P. H. SEYMOUR,
Of Counsel.

J. L. THWING,
BOOK AND COMMERCIAL PRINTER,
DULUTH, MINN.



Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 313.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY),
Plaintiff in Error.

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETHA LONSTORF, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The action terminating in the judgment upon which the writ of error issued in this case, was brought by the Germania Iron Company, the plaintiff in error, as plaintiff, against the defendants in error, as defendants, in the

District Court of St. Louis County, Minnesota, and was a statutory action to determine adverse claims to certain real estate, to-wit, the southeast quarter of the northwest quarter of Section thirty, in township sixty-three north of range eleven west of the Fourth Principal Meridian, according to the government survey in said St. Louis County, Minnesota.

Subsequently to the commencement of the action, the Midway Company was substituted as the plaintiff for the Germania Iron Company, by whom the land in question had been transferred to the said the Midway Company (Record page 91). The Midway Company claims title under a patent issued by the United States to Emil Hartmann, dated October 21st, 1895 (Record p. 169), by whom the land in controversy was conveyed to the Germania Iron Company (Record p. 335), by whom the same was conveyed to the Midway Company (Record p. 337).

The defendants claim title under a certain location of Sioux Half-Breed scrip issued under the Act of Congress of July 17th, 1854, (10 Statutes, 304) such location having been made by the said Frank W. Eaton, on June 16th, 1883, upon lands then unsurveyed, embracing those in controversy, the other defendants claiming under said Eaton. This location was cancelled in pursuance of a decision of the Hon. William F. Vilas, Secretary of the Interior, dated February 18th, 1889, (unpublished) a copy of which is annexed to and made a part of the Findings of the trial court (Record p. 95). The defendants Merritt, Fagan and Clark joined in an answer (Record p. 32). The defendant Lonstorf answered separately (Record p. 63) and the defendant Eaton stipulated that the answer of the defendants Clark, Merritt and Fagan should stand as his answer in said cause (Record p. 352).

The findings of fact *of the trial court* are found at page 95 of the Record and the judgment entered in pursuance thereof against the plaintiff in error and in favor of the defendants is found at page 345. From this judgment an appeal was taken to the Supreme Court of Minnesota, by whom the same was by its judgment rendered May 29th, 1899, in all things affirmed. On June 4th, 1899, a writ of error to the Supreme Court of the United States to review the judgment aforesaid, was allowed and issued.

The case at bar as originally brought was against not only the defendants in error, but against other defendants, whose rights were determined either by failure to appear and make any claim, or, in the case of Thomas W. Hyde, by the adverse decision of the lower court, this court having during the pendency of said action, rendered a decision decisive of Hyde's claim, (See Bishop Iron Company vs. Hyde, 177 U. S. 281,) and no appeal having been taken by Hyde from the decision of the trial court. The case at bar was tried and stands upon exactly the same record as was introduced in the Midway Company's vs. the defendants in error, being Number 312 upon the October Term, 1900, calendar of this court.

The questions presented then, are precisely the same as those presented in the Midway Company against Frank W. Eaton and others, the next preceding case upon the present calender, the land alone being other than that involved in the controversy in that case, but having been the subject of adjudication by the Land Department in and by the same decision of February 18th, 1889, referred to in the case of the Midway Company against Frank W. Eaton and others.

ASSIGNMENT OF ERRORS.

1. The court erred in holding that the Land Department of the United States had no authority to cancel the

locations of the Sioux Half-Breed scrip, issued under the Act of Congress, approved July 17th, 1854, and under which locations the defendants in error claim title.

2. The court erred in holding that the plaintiff in error holds the title derived under the patent issued by the United States, for the premises in controversy in said action, in trust for the defendants in error.

3. The court erred in holding that the defendants in error were and are the owners of the premises in controversy in said action.

4. The court erred in holding that the findings of fact of the court below justified its conclusions of law.

5. The court erred in holding that the title to the premises in controversy in this action, passed to Orillie Stram, nee Moreau, by virtue of the location of Sioux Half-Breed scrip, under which the defendants in error claim title.

6. The court erred in not holding that the findings of fact of the Secretary of the Interior, set forth and embodied in his decision of February 18th, 1889, were final and conclusive.

7. The court erred in not holding that the findings of fact of the Secretary of the Interior, set forth and embodied in his decision of February 18th, 1889, were sufficient to warrant and sustain the action of the Land Department of the United States in cancelling the Sioux Half-Breed scrip locations under which the defendants in error claim title.

8. The court erred in affirming the judgment of the court below.

9. The court erred in not reversing the judgment of of the court below and directing judgment for the plaintiff in error and against the defendants in error, as prayed in its complaint.

ARGUMENT.

In this case, it is only necessary to adopt the statement of facts and all other matters, set forth in our brief in the case of the Midway Company against Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan and Margaretha Lonstorf, next preceding the case at bar upon the October A. D. 1900, Term, calendar of this court.

For the reasons, and upon the authorities therein submitted, we respectfully submit that the judgment of the Supreme Court of Minnesota complained of, should be reversed, and judgment directed in favor of the plaintiff in error, and against the defendants in error as prayed for in its complaint.

WALTER AYERS,
Attorney for Plaintiff in Error.

P. H. SEYMOUR,
of Counsel.

FILED
OCT 17 1901
JAMES H. McKENNEY

SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, A. D. 1901.

NO. 81.

THE MIDWAY COMPANY, (Substituted for the GERMANIA IRON COMPANY,)
Plaintiff in Error,

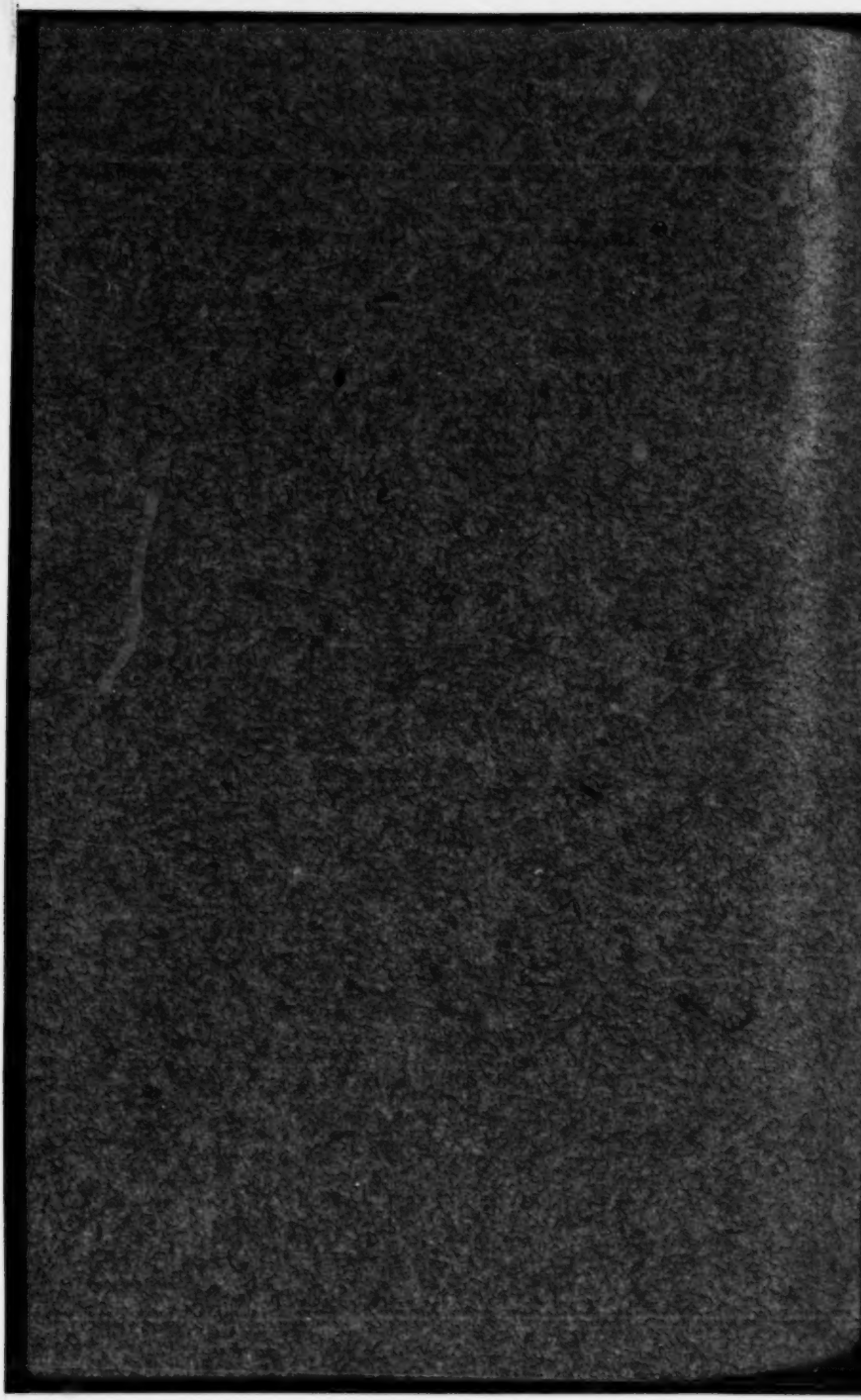
vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. EAGAN and MARGARETHA LONSTORF,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR FRANK W. EATON and MARGARETHA LONSTORF.

L. C. HARRIS,
C. A. TOWNE,
Counsel for Defendants in Error,
Frank W. Eaton and Margaretha Lonstorf.

C. H. THOMPSON & CO. PRINTERS, DULUTH



SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, A. D. 1901.

NO. 81.

THE MIDWAY COMPANY, (Substituted for the GERMANIA IRON COMPANY,)
Plaintiff in Error,

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETHA LONSTORF.
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR FRANK W. EATON and MARGARETHA LONSTORF.

ARGUMENT.

This case is between the same parties and comes up on the same record as Case No. 80, which

is on the Calendar for this term of court; and as the two will undoubtedly be argued together we submit this case on the brief filed in Case No. 80.

Respectfully submitted,

L. C. HARRIS,

C. A. TOWNE,

Counsel for Defendants in Error,

Frank W. Eaton and Margaretha Lonstorf.

No. 81.

Office - Supreme Court U.S.
OCT 17 1901
JAMES H. MCKENNEY
Clerk

SUPREME COURT
OF THE
UNITED STATES.

October Term, A. D. 1901.

No. 81.

THE MIDWAY COMPANY, (Substituting for the GERMANIA IRON COMPANY)

Plaintiff in Error,

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETTA LONSTORF,

Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR, MERRILL M. CLARK, RICHARD H. FAGAN and LEONIDAS MERRITT.

JOHN L. WALLBRIDGE,
Attorney for Defendants in Error,
Merrill M. Clark, Richard
Fagan and Leonidas Merritt.

WILLIAM D. SHIELDS,
Of Counsel.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1901.

NO. 81.

THE MIDWAY COMPANY, (Substituted for the GERMANIA IRON COMPANY,)
Plaintiff in Error,

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETHA LONSTORF.
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR—MERRILL M. CLARK, RICHARD H. FAGAN and LEONIDAS MERRITT.

ARGUMENT.

This case is identical with case No. 80, and was tried therewith in the District Court of St. Louis County, Minnesota, and argued therewith in the

Supreme Court of Minnesota. It was first brought by Germania Iron Company, but the Midway Company was thereafter substituted in its place and the case proceeded to trial with the last mentioned company as plaintiff.

The land involved is the S. E. ¼ of N. W. ¼ of Section 30, Township 63, Range 11. This was one of the parcels covered by the location of the Sioux half-breed scrip of Orillie Stram No. 19 D for 160 acres, and, after the cancellation of the scrip location, Emil Hartman, in the interest as we understand it, of the plaintiff, was allowed to locate Valentine scrip thereon, and the land being patented to him, was conveyed to the Germania Iron Company and then to the plaintiff.

The statement of facts which we have made in the other case covers this one and the brief in all respects applies to this case the same as the other and hence we adopt our brief in that case as the brief in this one, refer to it as such and submit this cause with the other in obedience to the same practice heretofore pursued.

Duluth, September, 1901.

Respectfully,

JED L. WASHBURN, AND

WILLIAM D. BAILEY,

Attorneys for Defendants in Error,

Merrill M. Clark, Richard H. Fagan, Leonidas Merritt.

Supreme Court of the United States.

No. 81.—October Term, 1901.

The Midway Company, Plaintiff in Error, *vs.* Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan and Margaretha Lonstorf.	In error to the Supreme Court of the State of Minnesota.

[January 13, 1902.]

Mr. Justice McKenna delivered the opinion of the Court.

This action was brought by the Germania Iron Company against the defendants in error in the district court of St. Louis County, State of Minnesota, to determine adverse claims to the S.E. ¼ of the N.W. ¼ of section 30, T. 63 N., of range 11 W., of the fourth principal meridian, according to the government survey in said St. Louis County.

Pending the action the land was conveyed to The Midway Company, and the latter company was substituted as plaintiff for the Germania Company.

Plaintiff in error claims title under a patent issued by the United States to Emil Hartman, dated October 21, 1895, by whom the land was conveyed to the Germania Company, and by the latter to the plaintiff in error.

The defendants claim title under a certain location of Sioux half-breed scrip issued under the act of July 17, 1854. (10 Stat. 304.)

The trial court rendered judgment for defendants, which was affirmed by the Supreme Court of the State, and this writ of error was then allowed by the Chief Justice of that court.

The facts of this case are the same and are presented upon exactly the same record, the same assignments of error and contentions, as in *The Midway Company* v. *Eaton et al.*, No. 80, just decided. On the authority of that case the judgment of the Supreme Court is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.